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Homeland Security Department: FY2010 Appropriations

Updated December 14, 2009

Congressional Research Service

<https://crsreports.congress.gov>

R40642

Summary

This report describes the FY2010 appropriations for the Department of Homeland Security (DHS). The Administration requested a net appropriation of \$44.1 billion in budget authority for FY2010. This amounts to a \$2.8 billion, or a 6.7% increase over the \$41.2 billion enacted for FY2009 (not including supplemental funding). Total budget authority requested by the Administration for DHS for FY2010 amounts to \$55.1 billion.

Net requested appropriations for major agencies within DHS were as follows: Customs and Border Protection (CBP), \$10,049 million; Immigration and Customs Enforcement (ICE), \$5,458 million; Transportation Security Administration (TSA), \$5,267 million; Coast Guard, \$9,734 million; Secret Service, \$1,490 million; National Protection & Programs Directorate, \$1,319 million; Federal Emergency Management Administration (FEMA), \$7,235 million; Science and Technology, \$968 million; and the Domestic Nuclear Detection Office, \$366 million.

This report contains a detailed discussion of the President's budget request for DHS, but due to time constraints, the text does not include a detailed discussion of the House- or Senate-reported versions of the FY2010 bill. The tables reflect the House- and Senate-reported numbers.

The House Committee on Appropriations reported its version of the FY2010 DHS Appropriations bill on June 12, 2009. On June 24, 2009, the House passed H.R. 2892. This report uses House-passed H.R. 2892 and the accompanying committee report (H.Rept. 111-157) as the source for the House-passed numbers. The House-passed H.R. 2892 recommends a net appropriation of \$44.0 billion for DHS for FY2010. This amounts to a \$205 million decrease as compared to the Administration's request, and a nearly \$2.8 billion increase as compared to the \$41.2 billion enacted for FY2009 (not including FY2009 supplemental funding).

The Senate Committee on Appropriations reported its version of the FY2010 DHS Appropriations bill on June 17, 2009. On July 9, 2009, the Senate passed its version of H.R. 2892, after inserting the text of S. 1298 as a substitute amendment. This report uses Senate-passed H.R. 2892 and the committee report (S.Rept. 111-31) accompanying S. 1298 as the source for the Senate-passed numbers. The Senate-passed H.R. 2892 recommends a net appropriation of \$44.3 billion for DHS for FY2010. This amounts to a \$97 million increase as compared to the Administration's request, and a nearly \$3.1 billion increase as compared to the \$41.2 billion enacted for FY2009 (not including FY2009 supplemental funding).

The President signed the DHS Appropriations Act 2010 (P.L. 111-83) into law on October 28, 2009. The Act provides gross budget authority of \$51.9 billion dollars for DHS for FY2010. The Act provides \$44.1 billion in net budget authority for DHS for FY2010. This amounts to a \$0.1 billion decrease as compared to the \$44.2 billion requested for DHS for FY2010, a \$0.1 billion increase as compared to the \$44.0 billion recommended by the House, a \$0.2 billion decrease as compared to the \$44.3 billion recommended by the Senate, and a \$2.9 billion increase over the FY2009 enacted amount of \$41.2 billion.

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Most Recent Developments

P.L. 111-83

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President's FY2010 Budget Submitted

The Administration requested a net appropriation of \$44.1 billion in budget authority for FY2010. This amounts to a \$2.8 billion, or a 6.7% increase over the \$41.2 billion enacted for FY2009 (not including supplemental funding). Total budget authority requested by the Administration for DHS for FY2010 amounts to \$55.1 billion.

Net requested appropriations for major agencies within DHS were as follows: Customs and Border Protection (CBP), \$10,049 million; Immigration and Customs Enforcement (ICE), \$5,458 million; Transportation Security Administration (TSA), \$5,267 million; Coast Guard, \$9,734 million; Secret Service, \$1,490 million; National Protection & Programs Directorate, \$1,319 million; Federal Emergency Management Administration (FEMA), \$7,235 million; Science and Technology, \$968 million; and the Domestic Nuclear Detection Office, \$366 million.

Table I. Legislative Status of Homeland Security Appropriations

Subcommittee Markup		H.Rept. 111-157	House Passage	S.Rept. 111-31	Senate Passage	Conference Report Approval (H.Rept. 111-298)		P.L. 111-83
House	Senate					House	Senate	
6/8 (vv)	6/17 (vv)	6/12 (vv)	6/24 (389-37)	6/18 (vv)	7/9 (84-6)	10/15 (307-114)	10/20 (79-19)	10/28

Note: (vv) = voice vote, (uc) = unanimous consent.

Note on Most Recent Data

Data used in this report for FY2009 enacted, and FY2009 total amount are from the President's Budget Documents, the FY2010 *DHS Congressional Budget Justifications*, and the FY2010 *DHS Budget in Brief*. Data used in this report for the President's request and the House-passed amounts are from House-passed H.R. 2892 and H.Rept. 111-157; the Senate-passed amounts are from Senate-passed H.R. 2892 and S.Rept. 111-31, accompanying S. 1298. Final passage amounts are from P.L. 111-83 and the conference report, H.Rept. 111-298. Data used in **Appendix C** are taken from the *Analytical Perspectives* volume of the FY2009 President's Budget. Except when discussing total amounts for the bill as a whole, all amounts contained in this report are rounded to the nearest million.

Background

This report describes the President's FY2010 request for funding for DHS programs and activities, as submitted to Congress on May 7, 2009. It compares the enacted FY2009 amounts to the request for FY2010, and tracks legislative action and congressional issues related to the FY2010 DHS appropriations bills with particular attention paid to discretionary funding amounts. The report does not follow specific funding issues related to mandatory funding—such as retirement pay—nor does the report systematically follow any legislation related to the authorization or amendment of DHS programs.

Department of Homeland Security

The Homeland Security Act of 2002 (P.L. 107-296) transferred the functions, relevant funding, and most of the personnel of 22 agencies and offices to the new Department of Homeland Security created by the act. Appropriations measures for DHS have been organized into five titles: Title I Departmental Management and Operations; Title II Security, Enforcement, and Investigations; Title III Preparedness and Recovery; Title IV Research and Development, Training, Assessments, and Services; and Title V general provisions.

Title I contains appropriations for the Office of Management, the Office of the Secretary, the Office of the Chief Financial Officer, Analysis and Operations (A&O), the Office of the Chief Information Officer (CIO), the Office of the Inspector General (OIG), and the Office of the Federal Coordinator for Gulf Coast Rebuilding.

Title II contains appropriations for Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the Coast Guard (USCG), and the Secret Service. The U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program was appropriated within Title II through the FY2007 appropriation. The FY2008 appropriation transferred US-VISIT, as proposed by the Administration, to the newly

created National Protection & Programs Directorate (NPPD) in Title III. Division E of P.L. 110-161, the DHS Appropriations Act, 2008, enacted this reorganization.

Through the FY2007 appropriation, Title III contained appropriations for the Preparedness Directorate, Infrastructure Protection and Information Security (IPIS) and the Federal Emergency Management Administration (FEMA). The President's FY2008 request included a proposal to shift a number of programs and offices to eliminate the Preparedness Directorate, create the NPPD, and move several programs to FEMA. These changes were largely agreed to by Congress in the FY2008 appropriation, reflected by Title III in Division E of P.L. 110-161.

Title IV contains appropriations for U.S. Citizenship and Immigration Services (USCIS), the Science and Technology Directorate (S&T), and the Federal Law Enforcement Training Center (FLETC).

302(a) and 302(b) Allocations

The maximum budget authority for annual appropriations (including DHS) is determined through a two-stage congressional budget process. In the first stage, Congress sets overall spending totals in the annual concurrent resolution on the budget. Subsequently, these amounts are allocated among the appropriations committees, usually through the statement of managers for the conference report on the budget resolution. These amounts are known as the 302(a) allocations. They include discretionary totals available to the House and Senate Committees on Appropriations for enactment in annual appropriations bills through the subcommittees responsible for the development of the bills. In the second stage of the process, the appropriations committees allocate the 302(a) discretionary funds among their subcommittees for each of the appropriations bills. These amounts are known as the 302(b) allocations. These allocations must add up to no more than the 302(a) discretionary allocation and form the basis for enforcing budget discipline, since any bill reported with a total above the ceiling is subject to a point of order. 302(b) allocations may be adjusted during the year as the various appropriations bills progress towards final enactment.

The annual concurrent resolution on the budget sets forth the congressional budget. **Table 2** shows DHS's 302(b) allocations for FY2009 and the current appropriations cycle.

Table 2. FY2010 302(b) Discretionary Allocations for DHS

(budget authority in billions of dollars)

FY2009 Comparable	FY2010 Request Comparable	FY2010 House Allocation	FY2010 Senate Allocation	FY2010 Enacted Comparable
\$41.2	\$44.1	\$42.6	\$42.9	\$44.1

Source: CRS analysis of the *FY2010 DHS Congressional Budget Justifications*; H.Rept. 111-238, S.Rept. 111-62, and H.Rept. 111-298.

Budget Authority, Obligations, and Outlays

Federal government spending involves a multi-step process that begins with the enactment of budget authority by Congress. Federal agencies then obligate funds from the enacted budget authority to pay for their activities. Finally, payments are made to liquidate those obligations; the actual payment amounts are reflected in the budget as outlays.

Budget authority is established through appropriations acts or direct spending legislation and determines the amounts that are available for federal agencies to spend. The Antideficiency Act¹ prohibits federal agencies from obligating more funds than the budget authority that was enacted by Congress. Budget authority may be also be indefinite, as when Congress enacts language providing “such sums as may be necessary” to complete a project or purpose. Budget authority may be available on a one-year, multi-year, or no-year basis. One-year budget authority is only available for obligation during a specific fiscal year; any unobligated funds at the end of that year are no longer available for spending. Multi-year budget authority specifies a range of time during which funds can be obligated for spending; no-year budget authority is available for obligation for an indefinite period of time.

Obligations are incurred when federal agencies employ personnel, enter into contracts, receive services, and engage in similar transactions in a given fiscal year. Outlays are the funds that are actually spent during the fiscal year.² Because multi-year and no-year budget authorities may be obligated over a number of years, outlays do not always match the budget authority enacted in a given year. Additionally, budget authority may be obligated in one fiscal year but spent in a future fiscal year, especially with certain contracts.

In sum, budget authority allows federal agencies to incur obligations and authorizes payments, or outlays, to be made from the Treasury. Discretionary agencies and programs, and appropriated entitlement programs, are funded each year in appropriations acts.

Discretionary and Mandatory Spending

Gross budget authority, or the total funds available for spending by a federal agency, may be composed of discretionary and mandatory spending. Discretionary spending is not mandated by existing law and is thus appropriated yearly by Congress through appropriations acts. The Budget Enforcement Act of 1990³ defines discretionary appropriations as budget authority provided in annual appropriation acts and the outlays derived from that authority, but it excludes appropriations for entitlements. Mandatory spending, also known as direct spending, consists of budget authority and resulting outlays provided in laws other than appropriation acts and is typically not appropriated each year. However, some mandatory entitlement programs must be appropriated each year and are included in the appropriations acts. Within DHS, the Coast Guard retirement pay is an example of appropriated mandatory spending.

Offsetting Collections⁴

Offsetting funds are collected by the federal government, either from government accounts or the public, as part of a business-type transaction such as offsets to outlays or collection of a fee. These funds are not counted as revenue. Instead, they are counted as negative outlays. DHS net discretionary budget authority, or the total funds that are appropriated by Congress each year, is composed of discretionary spending minus any fee or fund collections that offset discretionary spending.

¹ U.S.C. §§1341, 1342, 1344, 1511-1517.

² Appropriations, outlays, and account balances for government treasury accounts can be viewed in the end of year reports published by the U.S. Treasury titled *Combined Statement of Receipts, Outlays, and Balances of the United States Government*. The DHS portion of the report can be accessed at <http://fms.treas.gov/annualreport/cs2005/c18.pdf>.

³ P.L. 101-508, Title XIII.

⁴ Prepared with assistance from Bill Heniff Jr., Analyst in American National Government.

Some collections offset a portion of an agency's discretionary budget authority. Other collections offset an agency's mandatory spending. They are typically entitlement programs under which individuals, businesses, or units of government that meet the requirements or qualifications established by law are entitled to receive certain payments if they establish eligibility. The DHS budget features two mandatory entitlement programs: the Secret Service and the Coast Guard retired pay accounts (pensions). Some entitlements are funded by permanent appropriations, others by annual appropriations. The Secret Service retirement pay is a permanent appropriation and as such is not annually appropriated, whereas the Coast Guard retirement pay is annually appropriated. In addition to these entitlements, the DHS budget contains offsetting Trust and Public Enterprise Funds. These funds are not appropriated by Congress. They are available for obligation and included in the President's budget to calculate the gross budget authority.

Table 3 tabulates all of the offsets within the DHS budget as enacted for FY2009 and in the FY2010 request.

Table 3. FY2010 Request: Moving From Gross Budget Authority to Net Appropriation—Fee Accounts, Offsetting Fees, and Trust and Public Enterprise Accounts

(budget authority in millions)

Account/Agency	Account Name	FY2009 Enacted	FY2010 Request
DHS gross budget authority (BA)^a		52,544	55,115
(gross discretionary + fees + mandatory + funds)			
Discretionary fee funded offsets			
ICE	Federal Protective Service	640	640
	Aviation security fees	2,323	2,249
TSA	TWIC	32	9
	Hazmat	15	15
	Registered Traveler		
FEMA/EPR	National Flood Insurance Fund	157	159
CBP	Small airports	7	8
Subtotal discretionary fee funded offsets		3,173	3,078
Mandatory fee funded offsets			
CBP	Immigration inspection	570	522
	Immigration enforcement	3	2
	Land border	27	34
	COBRA	411	398
	APHIS	333	325
	Puerto Rico	97	92
ICE	Immigration inspection	119	110
	SEVIS	120	120
	Breached bond detention fund	60	75
TSA	Aviation security capital fund	250	250
	Checkpoint screening security fund		
	Alien flight school background checks	4	4
USCIS	Immigration examination fee	2,495	2,452
	H1b, and H1b & L fees	44	51
Subtotal mandatory fee funded offsets		4,533	4,850

Account/Agency	Account Name	FY2009 Enacted	FY2010 Request
Mandatory budget authority			
Secret Service	Secret Service retired pay ^b	225	220
Coast Guard	Coast Guard retired pay ^c	[1,237]	[1,361]
Subtotal mandatory budget authority		225	220
Trust funds and public enterprise funds			
CBP	Customs unclaimed goods	6	6
FEMA	National Flood Insurance Fund ^d	3,037	3,085
Coast Guard	Boat safety	134	131
	Oil spill recovery	149	91
Subtotal trust and public enterprise funds		3,326	3,313
DHS gross budget authority^a		52,544	55,115
Total offsets		11,257	11,048
Rescissions		-81	
DHS net appropriated BA (Mandatory + Discretionary)		41,205	44,067

Source: CRS analysis of the FY2010 President's Budget, and the DHS FY2010 Budget in Brief.

Notes: Totals may not add due to rounding. Totals *do not* include FY2009 supplemental funding.

- DHS gross budget authority is the total budget authority available to the Department in a given fiscal year. This amount includes both appropriated and non-appropriated funding.
- Secret Service Retired Pay is permanently and indefinitely authorized, and as such is not annually appropriated. Therefore it is offset in **Table 3**.
- In contrast to Secret Service Retired Pay, Coast Guard Retired pay must be annually appropriated, and therefore is not offset in **Table 3**.
- This fund is comprised of both discretionary and mandatory appropriations; thus its component parts appear twice in this table.

Appropriations for the Department of Homeland Security

DHS Appropriations Trends

Table 4 presents DHS Appropriations, as enacted, for FY2003 through the FY2010 request. The appropriation amounts are presented in current dollars and are not adjusted. The amounts shown in **Table 4** represent enacted amounts at the time of the start of the next fiscal year's appropriation cycle (with the exception of FY2009). Thus, the amount shown for FY2003 is the enacted amount shown in the House committee report attached to the FY2004 DHS Appropriations bill. FY2008 is from the Joint Explanatory Statement for Division E of P.L. 110-161, and FY2009 and the FY2010 are from the FY2010 DHS Budget Justifications.

Table 4. DHS Appropriations, FY2003-FY2010

(budget authority in millions of dollars)

FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010 enacted
29,069 ^a	30,175 ^b	30,554 ^c	31,679	35,311 ^d	38,817 ^e	41,205	44,137

Sources: FY2003 enacted taken from H.Rept. 108-169; FY2004 enacted taken from H.Rept. 108-169; FY2005 enacted taken from H.Rept. 109-79; FY2006 enacted taken from H.Rept. 109-476; FY2007 appropriation

amounts are from the H.Rept. 110-181; and FY2008 enacted amounts are from Division E of P.L. 110-161, and tables in the Joint Explanatory Statement for Division E, published in the Congressional Record, December 17, 2007, pp. H16107-H16121 (incorporating amendments to the budget request). FY2009 enacted taken from the DHS Joint Explanatory Statement as submitted in the Congressional Record, and in the House- and Senate-enrolled version of H.R. 2638, and FY2010 enacted amounts are from the conference report to H.R. 2892, H.Rept. 111-298, and P.L. 111-83.

Notes: Amounts do not include supplemental appropriations or rescissions that were enacted subsequent to the enactment of each appropriations bill.

- a. S.Rept. 108-86 reported the FY2003 enacted amount as \$29,287 million. CRS was unable to identify the reason for this discrepancy. For the purposes of this table the House number was used to maintain consistency with other fiscal years.
- b. Amount does not include \$4,703 million in advance appropriations for Project Bioshield.
- c. Amount does not include \$2,508 million in advance appropriations for Project Bioshield
- d. Amount includes \$1,829 million in emergency budget authority that was enacted as a part of the FY2007 DHS Appropriations Act (P.L. 109-295).
- e. FY2008 Enacted includes emergency funding for DHS enacted by Division E of P.L. 110-161.

Summary of DHS Appropriations

Table 5 is a summary table comparing the enacted appropriations for FY2009 and the request for appropriations for FY2010.

Table 5. DHS: Summary of Appropriations

(budget authority in millions of dollars)

Operational Component	FY2009 Appropriation				FY2010 Appropriation			
	FY2009 Enacted	FY2009 Supplemental	FY2009 Rescission	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Title I								
Departmental Operations	645	200		845	905	617	861	802
Analysis and Operations	327			327	357	346	348	335
Office of the Inspector General	99	5		120	128	112 ^a	116 ^a	114
Subtotal: Title I	1,071	205		1,276	1,390	1,075^a	1,325^a	1,252^a
Title II								
Customs and Border Protection	9,821	680		10,501	10,049	10,006	10,170	10,127
Immigration and Customs Enforcement	4,989	20		5,009	5,458	5,430	5,445	5,437
Transportation Security Administration	4,367	1,000		5,367	5,396	5,294	5,307	5,258
U.S. Coast Guard	9,361	352		9,713	9,729	9,968	10,239	10,140
U.S. Secret Service	1,413	100		1,513	1,490	1,461	1,487	1,483
Net subtotal: Title II	29,951	2,152		32,103	32,122	32,161	32,648	32,445
Total fee collections	5,004	—		5,004	4,128	5,260	4,114	4,135
Gross subtotal: Title II	34,955	2,152		37,107	36,250	37,421	36,762	36,580
Title III								
National Protection & Programs Directorate	1,158	—		1,158	1,319	1,280	1,324	1,318
Office of Health Affairs	157	—		157	138	128	135	139
Federal Emergency Management Administration	7,038 ^b	610		7,648 ^b	7,235	7,386	7,100	7,128
Net subtotal: Title III	8,353^b	610		8,963^b	8,692	8,794	8,558	8,585
Total fee collections					640		1,115	1,115

Operational Component	FY2009 Appropriation				FY2010 Appropriation			
	FY2009 Enacted	FY2009 Supplemental	FY2009 Rescission	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Gross subtotal: Title III	8,353^b	610		8,963^b	9,332	8,794	9,673	9,700
Title IV								
Citizenship and Immigration Services	102			102	364	298	136	224
Federal Law Enforcement Training Center	333			333	289	283	288	283
Science and Technology	933			933	968	968	995	1,006
Domestic Nuclear Detection Office	514			514	366	416	374	383
Net subtotal: Title IV	1,882			1,882	1,987	1,965	1,792	1,896
Total fee collections	2,539			2,539	2,503	2,503	2,503	2,503
Gross subtotal: Title IV	4,421			4,421	4,490	4,468	4,295	4,399
Rescissions	-28			-28		-14^c	-36^d	-41^e
Gross DHS budget authority	48,748	2,765		51,513	51,268	51,744	52,020	51,890
Total fee collections	-7,543	—		-7,543	-7,077	-7,763	-7,732	-7,753
Net DHS budget authority	41,205	2,765		43,970	44,191	43,981	44,287	44,137

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Notes: Tables may not add due to rounding.

- Does not include a \$16 million transfer from FEMA's Disaster Relief Account in Title III.
- Includes \$50 million for Real ID.
- Includes rescissions of unobligated balances of: \$2 million from AO per Sec. 539; \$6 million from IPIS per Sec. 542; and \$6 million from FEMA's Trucking industry Grants.
- Includes rescissions of unobligated balances of: \$5 million from AO per Sec. 554; \$7 million from ICE Construction per Sec. 555; \$8 million from IPIS per Sec. 556; \$8 million from S&T RDAO per Sec. 557; and \$8 million from DNDO RDO per Sec. 558.
- Includes rescissions of unobligated balances of: \$6 million from Trucking Industry Security Grants per Sec. 573; \$2 million from AO per Sec. 574; \$8 million from IPIS per Sec. 575; \$7 million from S&T per Sec. 576; \$8 million from DNDO per Sec. 577; \$4 million from TSA R&D per Sec. 578; \$1 million from Coast Guard ACI per Sec. 579; and \$6 million from the Counterterrorism Fund per Sec. 580.

Title I: Departmental Management and Operations⁵

Title I covers the general administrative expenses of DHS. It includes the Office of the Secretary and Executive Management (OS&EM), which is comprised of the immediate Office of the Secretary and 12 entities that report directly to the Secretary; the Under Secretary for Management (USM) and its components, such as the offices of the Chief Administrative Officer, Chief Human Capital Officer, and Chief Procurement Officer; the Office of the Chief Financial Officer (OCFO); the Office of the Chief Information Officer (OCIO); Analysis and Operations Office (AOO); Office of the Federal Coordinator for Gulf Coast Rebuilding (OFCGCR); and Office of the Inspector General (OIG). **Table 6**, below, shows Title I appropriations for FY2009 and congressional action on the request for FY2010.

Table 6. Title I: Department Management and Operations

(budget authority in millions of dollars)

Operational Component	FY2009 Appropriation				FY2010 Appropriation			
	FY2009 Enacted	FY2009 Supp.	FY2009 Resc.	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Office of the Secretary and Executive Management	123	—		123	161	118	149	148
Office of the Under Secretary for Management	192	200		392	338	154	308	254
Office of the Chief Financial Officer	55	—		55	66	61	64	61
Office of the Chief Information Officer	272	—		272	338	282	338	338
Analysis and Operations	327	—		327	357	346	348	335
Office of the Federal Coordinator for Gulf Coast Rebuilding	2	—		2	2	2	2	2
Office of the Inspector General	115 ^a	5		120	128	112 ^b	116 ^b	114 ^b
Net Budget Authority: Title I	1,086	205		1,291	1,390	1,075	1,325	1,252

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Note: Tables may not add due to rounding.

a. Does not include a \$16 million transfer of funds from FEMA's Disaster Relief account.

b. Does not include a \$16 million transfer of funds from FEMA's Disaster Relief account.

⁵ Prepared by Barbara L. Schwemle, Analyst in American National Government, Government and Finance Division.

President's FY2010 Request

FY2010 requests compared to the FY2009 enacted appropriations were as follow: OS&EM, \$161 million, an increase of \$38 million (+31%); USM, \$338 million, an increase of \$146 million (+43%) when compared to the FY2009 enacted, (or a decrease of \$54 million (-14%) as compared with the total provided for FY2009 including supplemental amounts); OCFO, \$66 million, an increase of \$11 million (+20%); OCIO, \$338 million, an increase of \$66 million (+24%); AOO, \$357 million, an increase of \$30 million (+9%); OFCGCR, \$2 million, the same amount; and OIG, \$128 million, an increase of \$8 million (+7%). The total FY2010 request for Title I was \$1,390 million. This represents an increase of \$97 million (+8%) over the FY2009 total (enacted and supplemental funding).⁶

Of the amounts requested, the largest increase would occur in the OS&EM (requesting \$161 million and 678 full-time equivalent (FTE) employees). Within OS&EM, program increases are requested for the Office of Policy (requesting \$62 million and 208 FTE) and the Office for Civil Rights and Civil Liberties (requesting \$22 million and 99 FTE). Increased funding for the former office would be used for continued efforts to “strengthen DHS’s ability to maintain policy and operational readiness necessary to protect the homeland” and for the latter office would support staff increases. Other areas of increased OS&EM funding include requests of: \$7 million and 36 FTE for the Citizenship and Immigration Services Ombudsman to, among other activities, “establish a Virtual Ombudsman’s Office to provide for online case problem submission, improved analysis and reporting capabilities, and an electronic interface with customers and stakeholders as another avenue to share concerns and solutions” and \$4 million and 17 FTE for activities of the Office of Counternarcotics Enforcement, including “increase[d] involvement in counterdrug issues related to Afghanistan and Southwest Asia.”⁷

House-Passed H.R. 2892

The House Committee on Appropriations recommended these appropriations, as compared with the President’s request: OS&EM, \$118 million, (\$43 million or 26.7% less); USM, \$154 million, (\$184 million or 54.4% less); OCFO, \$61 million, (\$5 million or 7.6% less); OCIO, \$282 million (\$56 million or 16.6% less); AOO, \$346 million (\$11 million or 3.1% less); OFCGCR, \$2 million, the same amount; and OIG, \$128 million (including transferred funds), the same amount. The total funding recommended by the House committee for Title I was \$1,075 million (including \$16 million in transfers from the FEMA Disaster Relief account in Title III). This represents a decrease of \$315 million or 22.7% from the President’s request. Among the directives included in the committee report are these:

- In rejecting a proposed transfer of monies from other accounts to pay for travel by the Secretary and the Deputy Secretary, in advance, the committee directs the department to continue to manage travel as it has in the past.
- DHS is urged to adopt practices similar to those of other agencies in interacting with GAO, including “ensuring that GAO representatives have direct access to program officials and other relevant DHS employees, including contractors, for purposes of requesting records and obtaining information; expediting the internal review process for requested information by eliminating unnecessary or

⁶ DHS, FY2010 Budget Overview, pp. 2-3.

⁷ FY2010 DHS Justifications, Departmental Management and Operations, Office of the Secretary and Executive Management, pp. OSEM-71 – OSEM-74.

- redundant levels of review; directing program officials and other relevant DHS employees, including contractors, to provide GAO with immediate access to agency records upon request when such records are readily available and do not require further internal review; and providing GAO representatives with access to draft or other non-final agency records when pertinent to GAO's review.”⁸
- The Secretary is expected to report to the committee by September 30, 2009, and every six months thereafter, on a detailed inventory of the department's greenhouse gas emissions and plans for and progress in reducing such emissions.
 - The Office of the Chief Administrative Officer is directed to provide a detailed briefing to the committee on the plans to consolidate leases as part of the new DHS headquarters and provides \$10 million for needed improvements and security enhancements to leased space.
 - The OFCGCR is to work with FEMA, the Department of Health and Human Services, and the State of Louisiana “to identify and pursue the path forward to bringing Charity hospital in Southern Louisiana back on-line.”⁹
 - The OIG is urged to continue oversight of the relief and reconstruction efforts on the Gulf Coast. The IG is directed to forward copies of audit reports to the committee as they are issued and to inform the committee about reviews that recommend cancellation or modification of a major acquisition project or grant or significant budgetary savings.

The House-passed bill made significant reductions to several of the accounts under Title I and allocated funding within the accounts as follows (amounts are rounded):

- OS&EM—reduced by \$30 million (\$17 million, \$6 million, \$5 million, and \$2 million). Of the \$60,000 appropriated for official reception and representation expenses, \$20,000 would be allocated to the Office of Policy to host Visa Waiver Program negotiations in Washington, DC.
- USM—reduced by \$115 million (\$6 million, \$14 million, \$45 million, and \$50 million). The allocation of the appropriation would include at least \$1 million for logistics training, \$6 million for alteration and facilities improvements and relocation costs to consolidate the DHS headquarters at the Nebraska Avenue complex, and \$17 million for the Human Resources Information Technology program.
- OCFO—reduced by \$3 million. The appropriation would include \$11 million for financial systems consolidation.
- OCIO—reduced by \$18 million. The appropriation would include \$87 million (rounded) for salaries and expenses and \$213 million, reduced by \$18 million, for the development and acquisition of information technology equipment, software, services, and related activities.
- AOO—The appropriation would include \$200 million that would remain available until September 30, 2011.
- OIG—The appropriation includes up to \$150,000 that could be used for certain confidential operational expenses, including the payment of informants.

⁸ H.Rept. 111-157, p. 19.

⁹ H.Rept. 111-157, p. 30.

A general provision is continued at Section 516 of the House-passed bill that requires the Chief Financial Officer to submit reports on budget execution and staffing to the committee within 45 days after the end of each month.

Senate-Passed H.R. 2892

The Senate Committee on Appropriations recommended these appropriations, as compared with the President's request: OS&EM, \$149 million, (\$12 million or 7.5% less); USM, \$308 million, (\$30 million or 8.9% less); OCFO, \$64 million, (\$2 million or 3.0% less); OCIO, \$338 million (the same amount); AOO, \$348 million (\$9 million or 2.5% less); OFCGCR, \$2 million, the same amount; and OIG, \$132 million (including transferred funds), (\$4 million or 3.1% more). The total funding recommended by the Senate committee for Title I was \$1,341 million (including \$16 million in transfers from FEMA's Disaster Relief account in Title III). This represents a decrease of \$49 million or 3.5% from the President's request. Among the directives included in the committee report are these:

- A proposed transfer of monies from other accounts to pay for travel by the Secretary is approved.
- The department is directed to report to the committee within 90 days after the act's enactment, and quarterly thereafter, on efforts to coordinate chemical security across the government, including those related to conducting prompt and comprehensive federal safety investigations of chemical accidents.
- The department is to continue periodic briefings for the committee on the DHS headquarters consolidation project for which, the report notes, more than \$1 billion has been appropriated.
- The Secretary is directed to submit an expenditure plan for FY2010 for the Office of Intelligence and Analysis (I&A) under the AOO by February 5, 2010. Data that must be included in the plan are expenditures and staffing for each program for 2008 through 2010; both funded and filled positions for full-time equivalent employees (FTE), contractors, and detailees (both reimbursable and not); an explanation of the use of contract workers rather than FTE employees and a plan to reduce the reliance on contractors; funding by object classification for FY2008 through FY2010; and the number of employees funded by I&A who are supporting other organizations within DHS.
- The OFCGCR is directed to remain open at least until the end of FY2009, and to provide an expenditure plan for FY2010, by November 30, 2009. The plan should discuss the office's proactive assistance to the Gulf Coast, including supporting cooperation among federal agencies and promoting solutions for housing needs. The office is encouraged to consolidate data on funds for recovery efforts and measure the impact on recovery indicators, including repopulation, economic and job growth, reestablishment of local and state tax revenues, restoration of housing stock, and availability of critical services such as health care, education, criminal justice, and fire protection.¹⁰
- The Secretary is directed to maintain and update the direct link to the OIG's website on the DHS website. The report reiterates the necessity for agents, and especially those newly hired, to receive comprehensive training on ethics and public integrity.

¹⁰ S.Rept. 111-31, p. 23.

The Senate-passed bill allocates the funding within the accounts under Title I as follows (amounts are rounded):

- OS&EM—Of the \$60,000 appropriated for official reception and representation expenses, \$20,000 would be allocated to the Office of Policy to host Visa Waiver Program negotiations in Washington, DC. An appropriation of \$20 million would not be obligated for the Office of Policy until the DHS Secretary submits an FY2010 expenditure plan for the office.
- USM—The appropriation includes \$5 million for alteration and facilities improvements and relocation costs to consolidate the DHS headquarters at the Nebraska Avenue complex, and \$17 million (rounded) for the Human Resources Information Technology program.
- OCFO—The appropriation includes \$11 million for financial systems consolidation efforts.
- OCIO—The appropriation includes \$87 million for salaries and expenses and \$251 million for the development and acquisition of information technology equipment, software, services, and related activities, of which \$83 million would be for data center development and \$39 million of that would be for upgrades to power capabilities at the National Center for Critical Information Processing and Storage.
- AOO—The appropriation would include \$200 million that would remain available until September 30, 2011.
- OIG—The appropriation includes up to \$150,000 that could be used for certain confidential operational expenses, including the payment of informants.

A general provision at Section 519 of the Senate-passed bill requires the Chief Financial Officer to submit reports on budget execution and staffing, including the number of contract employees by office, to the committee within 45 days after the end of each month.

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The law provides these appropriations, as compared with the President's request: OS&EM, \$148 million (\$13 million or 8.1% less); USM, \$254 million (\$84 million or 24.8% less); OCFO, \$61 million (\$5 million or 7.6% less); OCIO, \$338 million (the same amount); AOO, \$335 million (\$22 million or 6.2% less); OFCGCR, \$2 million (the same amount); and OIG, \$130 million (including transferred funds) (\$2 million or 1.6% more). The total funding provided by the law for Title I is \$1,268 million (including \$16 million in transfers from FEMA's Disaster Relief account in Title III). This represents a decrease of \$122 million or 8.8% from the President's request. Among the provisions and directives included in the conference agreement are these:

- A proposed transfer of monies from other accounts to pay for travel by the Secretary and the Deputy Secretary is approved to more efficiently disburse payment for travel costs.
- The deputy secretary and the department are directed to follow the Senate report directives on coordinated efforts to secure chemical facilities and provide prompt and effective accident investigations, and to fulfill the requirements on reports and briefings.
- With regard to the development of the Quadrennial Homeland Security Review (QHSR) and the budget plan to carry out its findings, that plan "should be derived from a strategic policy review that fully considers threat, risk, and

mission requirements ... [and] any budget projections included in the QHSR should be based on actual needs to sufficiently carry out the long-term strategy and priorities for homeland security.”¹¹

- No funding is provided for the consolidation of headquarters leases because the justification was inadequate and there are budget constraints. The department is directed “to provide a more detailed plan and justification for its lease consolidation initiative, including projected cost savings” with the budget request for FY2011. The department is also directed “to continue periodic briefings on the St. Elizabeths headquarters consolidation project, including ... efforts to work with the local community and the National Capital Planning Commission to ensure” that parking and traffic management issues are addressed.¹²
- The CFO is directed to submit the FY2011 budget justifications concurrently with the President’s budget and with the level of detail specified in the House and Senate Committees on Appropriations reports. The CFO must ensure that the enacted FTE numbers for FY2010 stated in the justifications are those funded in the Act. The CFO shall not permit any component within the department to change the Programs, Projects, and Activities in the budget submission for FY2011 into any account structure other than that provided in the detailed funding tables included in the conference agreement without consulting in advance with the committees.
- The Secretary is directed to submit an expenditure plan for FY2010 for the Office of Intelligence and Analysis (I&A) under the AOO not later than 60 days after the act’s enactment, as discussed in the Senate report, “including balances carried forward from prior years.” As provided in the House and Senate reports, the Secretary is also directed to “continue to submit quarterly reports on the SLFC [State and Local Fusion Center] Program not later than 30 days after the end of each quarter of the fiscal year.”¹³
- The OFCGCR is directed to provide an expenditure plan for FY2010, no later than 60 days after the act’s enactment, as discussed in the Senate report. The office is encouraged to consolidate data on funds for recovery efforts and measure the impact on recovery indicators, including repopulation, economic and job growth, reestablishment of local and state tax revenues, restoration of housing stock, and availability of critical services such as health care, education, criminal justice, and fire protection. The office is also directed to work with stakeholders “to identify and pursue a path forward to bring New Orleans Charity Hospital back on-line.”¹⁴
- The Inspector General is directed to delay, for 15 days, the public release of final audit or investigation reports requested by the House and Senate Committees on Appropriations.

The law allocates the funding within the accounts under Title I as follows (amounts are rounded):

- OS&EM—Of the \$60,000 appropriated for official reception and representation expenses, \$20,000 is allocated to the Office of Policy to host Visa Waiver

¹¹ H.Rept. 111-298, pp. 53-54.

¹² Ibid., pp. 57-58.

¹³ Ibid., pp. 60-61.

¹⁴ Ibid., p. 61.

Program negotiations in Washington, DC. An appropriation of \$15 million shall not be obligated for the Office of Policy until the DHS Secretary submits an FY2010 expenditure plan for the office.

- USM—The appropriation includes at least \$1 million for logistics training, more than \$5 million for alteration and facilities improvements and relocation costs to consolidate the DHS headquarters at the Nebraska Avenue complex, and more than \$17 million for the Human Resources Information Technology program.
- OCFO—The appropriation includes \$11 million for financial systems consolidation efforts. Of the total amount appropriated, \$5 million shall not be obligated until the CFO, or the individual acting in that capacity, submits to the House and Senate Committees on Appropriations an improvement plan, with yearly milestones, to address the OIG’s recommendations made in report number OIG-09-72. The plan must be submitted by January 4, 2010.
- OCIO—The appropriation includes almost \$87 million for salaries and expenses and more than \$251 million for the development and acquisition of information technology equipment, software, services, and related activities, of which almost \$83 million is for data center development, and at least some \$38 million of that is for upgrades to power capabilities at the National Center for Critical Information Processing and Storage.
- AOO—The appropriation includes almost \$191 million that shall remain available until September 30, 2011.
- OIG—The appropriation includes up to \$150,000 that may be used for certain confidential operational expenses, including the payment of informants. The law authorizes the transfer of \$16 million from the Disaster Relief Fund under the Federal Emergency Management Agency (FEMA) “to continue and expand audits and investigations related to disasters.” The IG must notify the House and Senate Committees on Appropriations at least 15 days prior to such transfers. The IG is also to investigate hiring practices at FEMA, evaluate whether a \$35 million budget request is sufficient to address “structural pay deficiencies”¹⁵ at that agency, and report to the committees no later than 90 days after the act’s enactment.

A general provision at Section 515 of the conference agreement requires the CFO to submit reports on budget execution and staffing, including the number of contract employees by office, to the House and Senate Committees on Appropriations within 45 days after the end of each month.

Personnel Issues

The Office of the Chief Human Capital Officer (OCHCO) manages and administers human resources at DHS and includes the Office of Human Capital (OHC). The OCHCO “establishes policy and procedures” and provides “oversight, guidance, and leadership within the Department” for the various functions under human capital management. These functions are policy and programs, learning and development, executive resources, human capital business systems, headquarters human resources management services, and business support and operations. The OCHCO reports to the Under Secretary for Management, and its appropriation is included in that

¹⁵ Ibid., p. 62.

of the Under Secretary. The OHC implements the Human Capital Operational Plan and is organized around the initiatives of talent management, performance culture, learning and development, and service excellence.¹⁶

Table 7, below, shows the funding and staff for the OCHCO for FY2009 and congressional action on the request for FY2010.

Table 7. Office of the Chief Human Capital Officer Appropriations

(budget authority in millions of dollars)

Account	FY2009 Enacted	FY2010 Request	FY2010 House- passed	FY2010 Senate- passed	FY2010 Enacted
Salaries and Expenses CHCO	\$29	\$34	34	34	33
Human Resources—Operational Initiatives and HR Management Systems	\$10	\$10	10	10	10
Total	\$39	\$44	44	44	43
Staffing (full time equivalent, FTE, positions)	79	89	89	89	

Sources: FY2010 DHS Justifications, Departmental Management and Operations, Under Secretary for Management, p. USM-4, H.R. 2892, as passed by the House and the Senate, H.Rept. 111-157, Senate-reported S. 1298, and S.Rept. 111-31.

President's FY2010 Request

According to the DHS Justifications, the FY2010 budget requested \$44 million¹⁷ and 89 full-time equivalent (FTE) employees for the OCHCO.¹⁸ The requested funding is \$5 million above the \$39 million provided for FY2009. The number of FTEs would increase by 10 over the 79 authorized for FY2009. An appropriation is not requested for the new human resources management system that was authorized in P.L. 107-296.¹⁹

The justification that accompanied the DHS budget request for FY2010 stated that the increased funding would be used for continued support of learning and development of the department's workforce through the Preparedness Center, the Leadership Institute, the Homeland Security Academy, and the Center for Academic and Interagency Outreach; human capital programs; and investments in programs to foster diversity, recruitment, and retention.²⁰ The competencies

¹⁶ FY2010 DHS Justifications, Departmental Management and Operations, Under Secretary for Management, p. USM-2; and FY2010 DHS Justifications, Departmental Management and Operations, Under Secretary for Management, Strategic Context, p. USM-3.

¹⁷ Salaries and benefits (\$14 million) and other services (\$22 million) account for 82% of the total of \$44 million. Other services include contractual services with non-federal sources.

¹⁸ FY2010 DHS Justifications, Departmental Management and Operations, Under Secretary for Management, p. USM-7.

¹⁹ Title VIII, Subtitle E, Section 841 of P.L. 107-296, enacted on November 25, 2002 (116 Stat. 2135, at 2229-2234), established a new human resources management system for DHS. P.L. 110-329, enacted on September 30, 2008, prohibits the use of appropriated funds to implement the new personnel system and its development was halted by DHS effective on October 1, 2008.

²⁰ DHS Justifications, Departmental Management and Operations, Under Secretary for Management, Strategic Context,

required for mission critical occupations within DHS will be reassessed in FY2010 and any gaps that are revealed will be closed through training and development, such as classroom courses, details, and rotations through various positions. The skill and proficiency levels of the department's human resources staff will be increased through continuing professional development.

The Human Resources Information Technology (HRIT) program is designed to “merge and modernize the DHS HRIT infrastructure to provide flexibility and the management information that will allow DHS to continuously evolve.” In 2010, a new enterprise performance management system is expected to be implemented under HRIT. Departmental goals to enhance workforce diversity include the establishment of a Diversity Outreach Advisory Forum and training of managers and executives on recruiting and supervising a diverse workforce.²¹

House Action

The House committee recommended and the House passed an appropriation of \$44 million (rounded amount) for the OCHCO, that is \$800,000 less than the President's request. Of the total, \$34 million is for salaries and expenses and \$10 million is for enhancements to employee morale and creation of a more satisfying work environment. The committee report directs the OCHCO to continue providing monthly reports that summarize vacancies on a timely basis to the House and Senate Appropriations Committees. These reports should include new hires in each headquarters office, the ratio of applications received to vacancies closed, new hires pending completion of the security or suitability clearance, open vacancies, and selection referrals pending with management. The House-passed bill would continue a general provision, at Section 519, that would prohibit the obligation of appropriations “for the development, testing, deployment, or operation of a human resources management [HRM] system authorized by 5 U.S.C. §9701(a) or implementing regulations. The provision also would mandate that the DHS Secretary collaborate with employee representatives as authorized by 5 U.S.C. §9701(e) “in the planning, testing, and development of any portion of [an HRM] system that is developed, tested, or deployed for persons excluded from the definition of employee.” A new provision at Section 544 would permit the Secretary to provide allowances and benefits similar to those provided under Title I, chapter 9 of the Foreign Service Act of 1990 to personnel serving abroad.

Senate Action

The Senate committee recommended and the Senate passed an appropriation of \$44 million (rounded amount) for the OCHCO, that is \$800,000 less than the President's request. Of the total, \$34 million is for salaries and expenses and \$10 million is for human resources initiatives. The committee report states that the reduction results from the delay in filling full-time permanent positions within the OCHCO and notes that, as of April 25, 2009, the office was 44% below the funded staffing levels. The committee directs that funding for contractors be limited so that the office can be “right sized” with federal employees and mandates the continuation of a reporting requirement and the preparation of a new report. Being continued, is the monthly report on vacancies that is to include information on the time it takes to hire and seat an employee once a vacancy is announced, the reasons for any hiring delays, steps taken or planned to remedy delays, and progress in reducing security clearance backlogs and meeting the 15-day standard for suitability reviews. A new requirement mandates that the OCHCO report on its performance in

pp. USM-3-USM-4.

²¹ DHS Justifications, Departmental Management and Operations, Under Secretary for Management, pp. USM-9 and USM-12 - USM-13.

2009 in meeting established metrics, including those on meeting a 45-day hiring standard, a 10.5% or lower attrition rate for senior executive personnel, 530 or more civilian employees serving in the department's interagency and interdepartmental Rotation Training Program, 51% or more DHS employees responding favorably to the Federal Human Capital Survey, and 30% or more of civilian employees in National Security Professional positions. The Senate-passed bill includes the provisions on the HRM system and allowances and benefits similar to the Foreign Service at Section 522 and Section 544, respectively, the same as the House-passed bill would provide.

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The law provides an appropriation of \$43 million (rounded amount) for the OCHCO, that is more than \$1 million less than the President's request. Of the total, \$33 million is for salaries and expenses and \$10 million is for human resources. The conference agreement states that the reduction is made because the "office will likely lapse appropriated funds in"²² FY2009, and encourages the use of the authority at Section 505 of the Act that makes 50% of those balances available in FY2010. It directs the OCHCO to continue providing monthly reports, on a timely basis, that summarize vacancies to the House and Senate Committees on Appropriations. These reports are to include new hires in each headquarters office, the ratio of applications received to vacancies closed, new hires pending completion of the security or suitability clearance, open vacancies, and selection referrals pending with management. The OCHCO is also directed to provide the report on its FY2009 performance in meeting the established metrics, that were discussed in the Senate report, no later than 60 days after the act's enactment.

Among the general provisions included in the law are these:

- Section 518 prohibits the obligation of appropriations "for the development, testing, deployment, or operation of any portion of a human resources management [HRM] system authorized by 5 U.S.C. §9701(a)" or implementing regulations. The provision also mandates that the DHS Secretary collaborate with employee representatives as authorized by 5 U.S.C. §9701(e) "in the planning, testing, and development of any portion of [an HRM] system that is developed, tested, or deployed for persons excluded from the definition of employee, as that term is defined in 5 U.S.C. §7103(a)(2)."²³
- Section 525 prohibits the use of appropriated funds "to carry out reorganization authority," but the provision "is not intended to prevent the Department from carrying out routine or small reallocations of personnel or functions within [DHS] components."²⁴
- Section 546 permits the Secretary to provide allowances and benefits similar to those provided under Title I, chapter 9 of the Foreign Service Act of 1990 to personnel serving abroad.
- Section 556 prohibits the use of appropriated funds for first-class travel.
- Section 557 prohibits the use of appropriated funds "for adverse personnel actions for employees who use protective equipment or measures, including

²² Ibid., p. 57.

²³ Ibid., p. 31.

²⁴ Ibid., pp. 127-128.

surgical masks, N95 respirators, gloves, or hand-sanitizers in the conduct of their official duties.”²⁵

Section 566 permits “administrative law judges to be available temporarily to serve on an arbitration panel created under the American Recovery and Reinvestment Act for FEMA’s Public Assistance program for Hurricanes Katrina and Rita.”²⁶

Analysis and Operations²⁷

The DHS intelligence mission is outlined in Title II of the Homeland Security Act of 2002 (codified at 6 U.S.C. 121). Organizationally, and from a budget perspective, there have been several changes to the information, intelligence analysis, and infrastructure protection functions at DHS. Pursuant to the Homeland Security Act of 2002, the Information Analysis and Infrastructure Protection (IAIP) Directorate was established. The act created an Under Secretary for IAIP to whom two Assistant Secretaries, one each for Information Analysis (IA) and Infrastructure Protection (IP), reported. The act outlined 19 functions for the IAIP Directorate, including the following, among others:

- To assess, receive, and analyze law enforcement information, intelligence information, and other information from federal, state, and local government agencies, and the private sector to (1) identify and assess the nature and scope of the terrorist threats to the homeland, (2) detect and identify threats of terrorism against the United States, and (3) understand such threats in light of actual and potential vulnerabilities of the homeland;
- To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States;
- To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, and intelligence-related information within the federal government and between the federal government and state and local government agencies and authorities.

Former Secretary Chertoff’s Second Stage Review reorganization of the Department in 2005 made several changes to the DHS intelligence structure. IAIP was disbanded and the Office of Infrastructure Protection was placed within the newly created National Protection and Programs Directorate. The Office of Information Analysis was renamed the Office of Intelligence and Analysis and became a stand alone entity. The Assistant Secretary for Intelligence Analysis was designated the Department’s Chief Intelligence Officer.³¹ Pursuant to the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), the Homeland Security Act of 2002 (codified at 6 U.S.C. 201) was amended to codify the Office of Intelligence and Analysis and the Office of Infrastructure Protection and made the head of the Office of Intelligence and Analysis an Under Secretary position. It also designated the Under Secretary for Intelligence and Analysis as the Department’s Chief Intelligence Officer with responsibility for managing the entire DHS Intelligence Enterprise.³²

²⁵ Ibid., p. 130.

²⁶ Ibid., p. 131.

²⁷ Prepared by Mark A. Randol, Specialist in Domestic Intelligence and Counterterrorism, Domestic Social Policy Division.

In 2008, former Secretary Chertoff established the Office of Operations Coordination and Planning (OPS), built on the foundation of the former Office of Operations Coordination. OPS supports Departmental and interagency crisis and contingency planning and operations to support the Secretary of Homeland Security in his/her role as the principal Federal official for domestic incident management.²⁸

President's FY2010 Request

The FY2010 request for the Analysis and Operations (AOO) account is \$357 million, an increase of nearly \$30 million (+9%) over the enacted FY2009 amount. It should be noted that funds included in this account support both the Office of Intelligence and Analysis (I&A) and the Office of Operations Coordination and Planning (OPS). I&A is responsible for managing the DHS Intelligence enterprise and for collecting, analyzing, and sharing intelligence information for and among all components of DHS, and with the State, local, tribal, and private sector homeland security partners. As a member of the Intelligence Community, I&A's budget is part of the National Intelligence Program, a classified program document. OPS develops and coordinates departmental and interagency operations plans and manages the National Operations Center, the primary 24/7 national-level hub for domestic incident management, operations coordination, and situational awareness, fusing law enforcement, national intelligence, emergency response, and private sector information.

House-passed H.R. 2892

House-passed H.R. 2892 includes \$346 million for AOO, a \$12 million decrease (-3.3 %) from the Administration's request for FY2010, but \$18 million (+5.2 %) more than the FY2009 enacted level of \$327 million. House report, H.Rept. 111-157, indicates that the committee has reduced the funding requested for the National Applications Office (NAO) and the National Immigration Information Sharing Office (NIISO) below the levels requested. The committee is concerned that the Department has failed to adequately develop and submit operating documents and certifications showing that these programs can be conducted within privacy and civil liberties statutes. The committee also notes in H.Rept. 111-157, that it has provided funding to expand support to all existing State and Local Fusion Centers, but is concerned that I&A has failed to submit quarterly reports on this activity as required in the 2009 Appropriations Act. The committee directs I&A to re-establish this quarterly reporting requirement immediately, and to include a national review of fusion center distribution.

Senate-passed H.R. 2892

Senate-passed H.R. 2892 includes \$348 million for AOO, a \$9.5 million decrease (-2.7 %) from the Administration's request for FY2010, but \$20 million (+6 %) more than the FY2009 enacted level of \$327 million. In S.Rept. 111-31, the committee expresses concern that the Secretary has failed to submit an expenditure plan for FY2009 mandated in the joint explanatory statement accompanying P.L. 110-329. The committee requires the Secretary to submit an expenditure plan for FY2010 no later than February 5, 2010, which includes the following: (1) FY2010 expenditures and staffing allotted for each program as compared to each of years 2008 and 2009; (2) all funded versus on-board positions, including FTE, contractors, and reimbursable and non-

²⁸ According to Homeland Security Presidential Directive (HSPD)-5, *Management of Domestic Incidents*, (2003): "To prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies, the United States Government shall establish a single, comprehensive approach to domestic incident management.... The Secretary of Homeland Security is the principal Federal official for domestic incident management."

reimbursable detailees; (3) an explanation for maintaining contract staff in lieu of Government FTE; (4) a plan, including dates or timeframes for achieving key milestones, to reduce the office's reliance on contract staff in lieu of Federal FTE; (5) funding, by object classification, including a comparison to fiscal years 2008 and 2009; and (6) the number of I&A funded employees supporting organizations outside I&A and within DHS. The committee also directs the Department's Chief Intelligence Officer to continue quarterly updates to the Committees on Appropriations that detail progress in placing DHS intelligence professionals in State and local fusion centers.

P.L. 111-83

As approved by both houses of Congress and signed by the President, the final bill includes \$335 million for AOO, a \$22 million decrease (-6.2 %) from the Administration's request for FY2010, but \$8 million (+2.4 %) more than the FY2009 enacted level of \$327 million. The final bill stipulates that none of the funds shall be available to commence operations of the National Immigration Information Sharing Office (NIISO) or any follow-on entity until the Secretary certifies that such program complies with all existing laws, including all privacy and civil liberties standards, the Comptroller General of the United States notifies the Committees on Appropriations of the Senate and House of Representatives and the Secretary that the Comptroller has reviewed such certification, and the Secretary notifies the Committees on Appropriations of the Senate and House of Representatives of all funds to be expended on operations of the NIISO or any follow-on entity pursuant to section 503 of this Act. The conference report (H.Rept. 111-298) states that not later than 60 days after the date of enactment of this Act, the Secretary shall submit a FY2010 expenditure plan for the Office of Intelligence and Analysis as outlined in the Senate report (S.Rept. 111-31), including balances carried forward from prior years. In addition, the conference report requires the Secretary to continue to submit quarterly reports on the State and Local Fusion Center Program not later than 30 days after the end of each quarter of the fiscal year as discussed in the Senate and House (H.Rept. 111-157) reports.

Title II: Security Enforcement and Investigations

Title II contains the appropriations for the Bureau of Customs and Border Protection (CBP), the Bureau of Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), the US Coast Guard, and the US Secret Service. **Table 8** shows the FY2009 enacted and FY2010 appropriation action for Title II.

Table 8. Title II: Security, Enforcement, and Investigations

(budget authority in millions of dollars)

Operational Component	FY2009 Appropriation				FY2010 Appropriation			
	FY2009 Enacted	FY2009 Supp.	FY2009 Resc.	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Customs & Border Protection								
Salaries and expenses	7,603	160		7,763	7,623	7,616	8,076	8,065
Automation modernization	511			511	462	462	462	422
Air and Marine Interdictions	528			528	506	514	516	520
Border Security Fencing, Infrastructure, and Technology	775	100		875	779	732	800	800
Facilities Management (Construction)	403	420		823	679	682	316	320
Fee accounts ^a	1,448			1,448	1,432	1,432	1,432	1,432
Gross total	11,268	680		11,949	11,481	11,438	11,602	11,559
Offsetting collections	-1,448			-1,448	-1,432	-1,432	-1,432	-1,432
Net total	9,821	680		10,501	10,049	10,006	10,170	10,127
Immigration & Customs Enforcement								
Salaries and expenses	4,927			4,927	5,348	5,313	5,360	5,342
Federal Protective Services (FPS)	640			640	^b	1,115	^c	^d
Automation & infrastructure modernization	57	20		77	110	110	85	90
Construction	5			5		7		5
Fee accounts ^e	299			299	318 ^f	318 ^f	305 ^f	305 ^f
Gross total	5,928	20		5,948	5,776	6,863	5,750	5,742
Offsetting FPS fees	-640			-640		-1,115		
Offsetting collections	-299			-299	-318	-318	-305	-305
Net total	4,989	20		5,009	5,458	5,430	5,445	5,437

Operational Component	FY2009 Appropriation				FY2010 Appropriation			
	FY2009 Enacted	FY2009 Supp.	FY2009 Resc.	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Transportation Security Administration								
Aviation security (gross funding)	4,755	1,000		5,755	5,311	5,266	5,233 ^g	5,214
Surface Transportation Security	50			50	128	103	143	111
Transportation Threat Assessment and Credentialing	116			116	192	172	172	172
Credentialing Fees ^h	40			40	28	45	28	48
Transportation Security Support	948			948	1,005	993	1,000	1,002
Federal Air Marshals	819			819	860	860	860	860
Aviation security capital fund ⁱ	250			250	250	250	250	250
Gross total	6,978	1,000		7,978	7,774	7,689	7,685	7,656
Offsetting collections	-2,320			-2,320	-2,100	-2,100	-2,100	-2,100
Credentialing/Fee accounts	-40			-40	-28	-45	-28	-48
Aviation security capital fund (mandatory spending)	-250			-250	-250	-250	-250	-250
Net total	4,367	1,000		5,367	5,396	5,294	5,307	5,258
U.S. Coast Guard								
Operating expenses	6,195	112 ^j		6,307	6,556 ^k	6,822	6,838 ^l	6,805
Environmental compliance & restoration	13			13	13	13	13	13
Reserve training	131			131	134	134	134	134
Acquisition, construction, & improvements	1,495	98		1,593	1,384	1,347	1,598	1,537
Alteration of bridges	16	142		158		10	4	4
Research, development, tests, & evaluation	18			18	20	20	30	25
Retired pay (mandatory, entitlement)	1,237			1,237	1,361	1,361	1,361	1,361
Health care fund contribution	257			257	261	261	261	261

Operational Component	FY2009 Appropriation				FY2010 Appropriation			
	FY2009 Enacted	FY2009 Supp.	FY2009 Resc.	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Gross total	9,361	352		9,713	9,729^k	9,968	10,239^l	10,140
U.S. Secret Service								
Salaries and expenses	1,409	100 ^m		1,509	1,486	1,457	1,483	1,479
Acquisition, construction, improvements, and related expenses	4			4	4	4	4	4
Gross total	1,413	100^m		1,513	1,490	1,461	1,487	1,483
Gross Budget Authority: Title II	34,955	2,152		37,107	36,250	37,421	36,762	36,580
Offsetting collections:	-5,004			-5,004	-4,128	-5,260	-4,114	-4,135
Net Budget Authority: Title II	29,951	2,152		32,103	32,122	32,161	32,648	32,445

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Notes: Tables may not add due to rounding.

- a. Fees include COBRA, Land Border, Immigration Inspection, Immigration Enforcement, and Puerto Rico.
- b. The FY2010 requests proposes to move FPS to the NPPD under Title III, see **Table 14**.
- c. The Senate-reported version of S. 1298 also moves FPS to the NPPD under Title III, see **Table 14**.
- d. P.L. 111-83 moves FPS to the NPPD under Title III, see **Table 14**.
- e. Fees include Exam, Student Exchange and Visitor Fee, Breached Bond, Immigration User, and Land Border.
- f. The Administration's request, and House-passed H.R. 2892 assume ICE fee receipts totaling \$318 million, however, the Senate assumes receipts of \$305 million.
- g. Includes a \$5 million transfer to FEMA Fire Assistance Grants in Title III, per Section 572 of Senate-passed H.R. 2892.
- h. Fees include TWIC, HAZMAT, Registered Traveler, and Alien Flight School Checks.
- i. Aviation Security Capital Fund, used for installation of Explosive Detection Systems at airports.
- j. Transfer of \$112 million from the Department of Defense, Navy per P.L. 110-252.
- k. Does not include \$242 million for overseas contingency operations.
- l. Includes \$242 million for overseas contingency operations.
- m. \$100 million for Protection of Persons and Facilities per P.L. 111-8.

Customs and Border Protection (CBP)²⁹

CBP is responsible for security at and between ports-of-entry along the border. Since September 11, 2001, CBP's primary mission is to prevent the entry of terrorists and the instruments of terrorism. CBP's ongoing responsibilities include inspecting people and goods to determine if they are authorized to enter the United States; interdicting terrorists and instruments of terrorism; intercepting illegal narcotics, firearms, and other types of contraband; interdicting unauthorized travelers and immigrants; and enforcing more than 400 laws and regulations at the border on behalf of more than 60 government agencies. CBP is comprised of the inspection functions of the legacy Customs Service, Immigration and Naturalization Service (INS), and the Animal and Plant Health Inspection Service (APHIS); the Office of Air and Marine Interdiction, now known as CBP Air and Marine (CBPAM); and the U.S. Border Patrol (USBP). See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 9** for sub-account-level detail for CBP Salaries and Expenses (S&E) for FY2009 and FY2010.

Table 9. CBP S&E Sub-account Detail

(budget authority in millions of dollars)

Activity	FY2009 Enacted	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Headquarters Management and Administration	1,269	1,021	982	1,419	1,418
Border Security Inspections and Trade Facilitation @ POE	2,561	2,736	2,733	2,770	2,750
Inspections, Trade & Travel Facilitation @ POE	2,094	2,255	2,255	2,269	2,262
Container Security Initiative (CSI)/ International Cargo Screening (ICS)	149	165	162	165	162
Other International Programs	11	11	11	11	11
C-TPAT	64	63	63	63	63
FAST/NEXUS/SENTRI	11	11	11	11	11
Inspection and Detection Technology	146	144	144	164	154
Systems for Targeting	33	33	33	33	33
National Targeting Center	24	26	26	27	26
Training at POE	25	25	25	25	25
Harbor Maintenance Fee	3	3	3	3	3
Border Security and Control Between POE	3,501	3,557	3,592	3,577	3,587
Border Security and Control Between POE	3,426	3,505	3,539	3,525	3,535
Training Between the POE	75	52	52	52	52

²⁹ Prepared by Jennifer E. Lake, Analysts in Domestic Security, and Chad C. Haddal, Analyst in Immigration Policy, Domestic Social Policy Division.

Activity	FY2009 Enacted	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Air and Marine Operations - Salaries	272	310	310	310	310
Rescission	—	—	—	—	—
CBP Salaries and Expenses					
Total:	7,603^a	7,623	7,616	8,076	8,065

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Note: Tables may not add due to rounding.

a. This total does not include \$160 million in emergency funding appropriated by P.L. 111-5.

President's FY2010 Request

The Administration requested an appropriation of \$11,431 million in gross budget authority for CBP for FY2010, amounting to a \$163 million (or 1%) increase over the enacted FY2009 level of \$11,268 million. The Administration requested \$10,049 million in net budget authority for CBP in FY2010, which amounts to a \$228 million increase over the net FY2009 appropriation of \$9,821 million.

House-Passed H.R. 2892

House-passed H.R. 2892 would provide \$11,438 million in gross budget authority for CBP for FY2010, amounting to \$43 million (or roughly 1%) less than was requested by the Administration, and a \$511 million or 4% decrease over the enacted FY2009 level of \$11,949 million. House-passed H.R. 2892 included \$10,006 million in net budget authority for CBP for FY2010, amounting to a \$43 million decrease over the Administration's request, and a \$495 million decrease over the FY2009 enacted level of \$10,501 million.

Senate-Passed H.R. 2892

Senate-passed H.R. 2892 would provide \$11,602 million in gross budget authority for CBP for FY2010, amounting to \$121 million (or 1%) more than was requested by the Administration, and a \$347 million or 3% decrease over the enacted FY2009 level of \$11,949 million. Senate-passed H.R. 2892 included \$10,170 million in net budget authority for CBP for FY2010, amounting to a \$121 million increase over the Administration's request, and a \$349 million increase over the FY2009 enacted level of \$9,821 million.

P.L. 111-83

P.L. 111-83 provided \$11,559 million in gross budget authority for CBP for FY2010, amounting to \$78 million (or 1%) more than was requested by the Administration, and a \$291 million or 3% increase over the enacted FY2009 level of \$11,268 million. P.L. 111-83 included \$10,127 million in net budget authority for CBP for FY2010, amounting to a \$78 million increase over the Administration's request, and a \$349 million increase over the FY2009 enacted level of \$9,821 million.

Issues for Congress

Issues that Congress could consider during the FY2010 appropriations cycle include funding for and deployment of the Secure Border Initiative (SBI) technologies known as SBInet; CBP officers and Border Patrol agents hiring and staffing levels; the Western Hemisphere Travel Initiative (WHTI); the designation of CBP Officers as law enforcement officers for retirement purposes; and the declining request for appropriations for some cargo security initiatives.

Fencing, Infrastructure, and Technology

The Administration requested \$779 million for the deployment of SBInet³⁰ related technologies and infrastructures in FY2010, a decrease of \$4 million over the FY2009 enacted level of \$775 million (this total does not include \$100 million from the American Recovery and Reinvestment Act³¹). Within the FY2010 request, the Administration is proposing to allocate \$494 million for developing and deploying additional technology and infrastructure solutions to the southwest border. An additional \$200 million is requested for operations and maintenance of the cameras, sensors, and tactical infrastructure (TI) fencing. The Administration notes that this will fund the costs associated with operating and maintaining the technologies that have already been deployed to the border as part of the SBI program. CBP states that the 670 miles of pedestrian and vehicle fencing along the southwest border are largely completed, and their attention will now shift towards other priorities, including the deployment of multiple SBInet projects.³² The management of SBInet, however, has come under scrutiny. The Government Accountability Office (GAO) noted that the Border Patrol was not consulted early enough in the process of developing the technology solutions that would be used by SBInet, and that this fact combined with some challenges relating to the integration of the technologies deployed by Boeing led to an eight month delay in the initial pilot program's deployment in Tucson Sector.³³ Oversight of the SBInet program's continuing deployment of technology at the border, including whether DHS is on track to meet its goals, may be an issue of concern to Congress as it considers the FY2010 request.

House-passed H.R. 2892 would have provided \$732 million for the fencing, infrastructure and technology-related account in CBP. Of this funding, \$440 million would go towards development and deployment of technology and TI. The funding would also have included \$40 million for environmental and regulatory assessments and mitigation. Moreover, \$150 million of the funding would remain unavailable until an expenditure plan was submitted. The report language also called for an "alternative analysis" for operational control at the border, as well as more consultation between CBP and local communities about border control activities. Senate-passed H.R. 2892 would have provided \$800 million for the fencing, infrastructure and technology-related account in CBP, of which \$515 million would go towards development and deployment. P.L. 111-83 provided \$800 million for the fencing, infrastructure and technology-related account in CBP, of which \$508 million was for development and deployment and \$40 million was for environmental and regulatory assessments and mitigation.

³⁰ SBInet is the technological and infrastructure component of the Secure Border Initiative (SBI), a multifaceted approach to securing the border. In its FY2007 budget submission, DHS asserted that it had "developed a three-pillar approach under the SBI that will focus on controlling the border, building a robust interior enforcement program, and establishing a Temporary Worker Program." *DHS FY2007 Justification*, p. CBP S&E 4.

³¹ P.L. 111-5.

³² *DHS FY2010 Justification*, p. CBP BSFIT 2.

³³ Testimony of GAO Director of Homeland Security and Justice Issues Richard Stana, in U.S. Congress, Committee on Appropriations, Subcommittee on Homeland Security, *DHS Has Taken Actions to Strengthen Border Security Programs and Operations, But Challenges Remain*, 110th Cong., 2nd Sess., March 6, 2009.

In addition to requiring the timely submission of an expenditure plan, the Senate report also noted a general disappointment that the upgrades of ports of entry are backlogged and that no funding request for new ports of entry were submitted. Also, both the House and Senate Reports voiced strong support for continuing efforts to secure the northern border, and include full funding for Border Patrol agents and recruitment. Consequently, P.L. 111-83 included \$40 million for Northern border security technology investment and funding for an additional 100 Border Patrol Agents.

In 2008, Congress included provisions in P.L. 110-161 requiring DHS to construct reinforced fencing or other barriers along not less than 700 miles of the southwest border, in locations where fencing is deemed most practical and effective. In carrying out this requirement, the Secretary is further directed to identify either 370 miles or “other mileage” along the southwest border where fencing would be most practical and effective in deterring smugglers and illegal aliens, and to complete construction of fencing in identified areas. These requirements would have been modified by S.Amdt. 1399 to Senate-passed H.R. 2892 to require that DHS construct reinforced fencing to “restrain pedestrian traffic” along the entire 700 miles of border identified by the Secretary for barrier construction. This language, however, was dropped by the conferees and excluded from P.L. 111-83.

Western Hemisphere Travel Initiative (WHTI)

The Administration requested an increase of \$21 million (for a total of \$145 million) for WHTI in FY2010. WHTI requires U.S. citizens, and Canadian, Mexican, and some island nation nationals to present a passport, or some other document or combination of documents deemed sufficient to denote identity and citizenship status by the Secretary of Homeland Security, as per P.L. 108-458 §7209. DHS has already required all U.S. citizens entering the country at air and sea POE to present passports as of January 18, 2007. P.L. 110-161, the Consolidated Appropriations Act, 2008, which requires U.S. citizens to provide proof of identity and citizenship at the land border, took effect June 1, 2009. Moreover, as of January 31, 2008, DHS has ended the practice of accepting oral declarations of citizenship at the land border and is requiring U.S. citizens to present a passport, some other accepted biometric document, or the combination of a driver’s license and a birth certificate, in order to re-enter the country³⁴ (although DHS has made public assurances that immigration inspectors will be allowed some discretion immediately following the WHTI requirements taking effect).³⁵ Issues for Congress include whether dissemination of WHTI documents is large enough to prevent a detrimental impact on the border regions, whether the proposed staffing increases and infrastructure modifications are adequate to meet the needs associated with the WHTI program, and whether the program to develop enhanced state driver’s licenses that may be used to cross the land-border adequately addresses security concerns.³⁶

House-passed H.R. 2892 would have included \$140 million for WHTI to be used on the continued costs of infrastructure, technology and operations for WHTI. In addition to general deployment, the House report noted that some of this funding would have been used for

³⁴ Department of Homeland Security, Press Release, *DHS Ends Oral Declarations at Borders, Reminds Travelers of New Procedures*, on January 31, January 18, 2008.

³⁵ Comments of Colleen Manahaer, Director, WHTI, at *New Administration, New Border Policy: International Conference and Congressional Briefing of the Border Trade Alliance*, Washington, DC, April 20, 2009.

³⁶ DHS entered into an agreement to with Washington State to develop driver’s licenses that would be considered WHTI-compliant. These enhanced driver’s licenses (EDL) have been issued since January 22, 2008 and several other states have signed agreements with DHS to develop their own EDLs. For additional information and discussion, see CRS Report RL32754, *Immigration: Analysis of the Major Provisions of the REAL ID Act of 2005*, by Michael John Garcia, Margaret Mikyung Lee, and Todd B. Tatelman.

expanding program support in anticipation of the 2010 Olympics in Vancouver, as well as for auditing of enhanced drivers licenses and wait time studies. Senate-passed H.R. 2892 would have fully funded the Obama Administration's request of \$145 million for WHTI. The Senate report also noted that WHTI implementation activities, including issuance of WHTI compliant tribal IDs, are eligible for funding under the State Homeland Security Grant Program. P.L. 111-83 fully funded the Obama Administration's request of \$145 million for WHTI.

Other Travel Programs

The new International Registered Traveler program enacted by the FY2008 Consolidated Appropriations Act, and which has been renamed Global Entry by the Administration, is currently being rolled out. The program gives pre-approved, low-risk travelers (U.S. Citizens and Legal Permanent Residents) expedited clearance into the United States at seven airports, and the program will eventually expand to the 20 busiest international airports.³⁷ An agreement with the Government of the Netherlands will allow qualified U.S. citizens to join Privium, the Dutch equivalent to Global Entry, and allow Dutch citizens to join Global Entry.³⁸ In addition, pursuant to requirements under Section 711 of the Implementing the Recommendations of the 9/11 Commission Act of 2007,³⁹ the Electronic System for Travel Authorization (ESTA) has been established to screen Visa Waiver Program travelers prior to travel to the United States. As eight countries were added to the Visa Waiver Program in 2008,⁴⁰ the ESTA program is projected to process over 17 million ESTA applications submitted by VWP travelers.⁴¹

H.Rept. 111-157 to H.R. 2892 notes that the enrollment in established trusted traveler programs—SENTRI, FAST, and NEXUS—has been growing, since participation satisfies the requirements of WHTI. The Global Entry program, however, has seen less growth than expected, according to the report. Also, H.Rept. 111-157 states that CBP is developing a global enrollment system that will, when fully operational, serve as the application gateway to a single trusted traveler program. The report does not provide indications of any timeline for developing such a system.

Secure Freight Initiative (SFI)

The Secure Freight Initiative (SFI) is the next stage in the Department's effort to secure cargo containers in-bound to the U.S. from foreign countries. According to DHS, SFI is now being characterized as a "three-pronged approach to enhance supply chain security."⁴² The three prongs of this approach are: the International Container Security project (ICS); the project to acquire data elements to improve risk-based targeting of containers, known as the Security Filing (SF) or "10+2"; and the efforts to identify and acquire technology to enhance cargo scanning and risk assessment capabilities.⁴³ The ICS is the component of the strategy whereby all U.S.-bound maritime containers are subject to an integrated scan (image and radiation detection) at the participating overseas port before being loaded on the U.S.-bound vessel. ICS is currently fully

³⁷ U.S. Customs and Border Protection, *Global Entry Program Overview*, Washington, DC, February 12, 2009, http://www.cbp.gov/xp/cgov/travel/trusted_traveler/global_entry/global_entry_discription.xml.

³⁸ U.S. Customs and Border Protection, *Global Entry with Expedited Entry into the Netherlands*, Washington, DC, May 5, 2009, http://www.cbp.gov/xp/cgov/travel/trusted_traveler/global_entry/global_entry_flux.xml.

³⁹ P.L. 110-53.

⁴⁰ These eight countries were Estonia, Czech Republic, Hungary, Latvia, Lithuania, Slovakia, South Korea, and Malta.

⁴¹ *DHS FY2010 Budget Justification*, p. CBP S&E 15.

⁴² DHS, *FY2009 Congressional Budget Justifications*, p. CBP-SE-26.

⁴³ DHS *FY2010 Congressional Budget Justifications*, p. CBP-S&E-23.

operational and scanning 100% of U.S.-bound containers at the Port of Southampton in the United Kingdom, the Port of Qasim in Pakistan, and at Puerto Cortes in Honduras.⁴⁴

The SF initiative, also referred to as “10+2” by CBP, is the latest effort to collect additional data pertaining to U.S.-bound maritime shipments. The SF initiative will allow CBP to collect additional data earlier in the supply chain to enhance risk assessment capabilities before cargo is loaded onto U.S.-bound vessels. CBP issued the final rule setting out the implementation of the 10+2 data requirements November 25, 2008.⁴⁵ The rule took effect on January 26, 2009, but is being implemented under a “delayed compliance period” which is currently scheduled to last 12 months.

CBP Congressional Budget Justification materials indicated that the \$165 million request for ICS in FY2010 includes a \$16 million increase for Secure Freight, the majority of which is what is characterized as a “base funding adjustment”.⁴⁶ According to the budget justification materials, the goals for FY2010 include expanding SFI “as permitted” to an additional nine locations that would focus on high-risk trade corridors. An issue for Congress might be whether or not the requested increase of \$16 million is sufficient to support the expansion of SFI, given that the majority of the requested increase has been characterized as an adjustment to base funding, rather than as a programmatic increase. Congress may also wish to examine the criteria CBP is using to select the additional SFI locations, and in particular their designation as high-risk. House-passed H.R. 2892 provides \$162 million for ICS (\$3 million below the request for FY2010), while Senate-passed H.R. 2892 fully funds the President’s request for this activity. P.L. 111-83 provides \$162 million for ICS.

H.Rept. 111-157 contains language expressing the Appropriations Committee’s understanding that while SFI has produced interesting data and results, it has also revealed “considerable challenges”. The committee states that:

It has become increasingly clear that, at least for now, a 100 percent scanning goal is not feasible, and even if it were, would come at an unacceptably high cost monetarily and in the displacement of other efforts.⁴⁷

The committee report requires CBP to report, not later than January 15, 2010, on its strategy to “achieve meaningful cargo and supply chain security” in the absence of the 100% scanning requirement. The adopted conference report to H.R. 2892 includes language instructing CBP to report, as described in the House report, no later than February 1, 2010.

It is important to note that CBP is currently describing the Secure Freight Initiative (SFI) as the next phase/iteration or future of the Container Security Initiative (CSI). CSI may also be referred to as a component of the International Container Security (ICS) project. The ICS, as noted above, is the new umbrella name for CBP’s international cargo security initiatives, which includes CSI and SFI.

Container Security Initiative

CSI is a program by which CBP stations CBP officers in foreign ports to target high-risk containers for inspection before they are loaded on U.S.-bound ships. CSI is currently operational

⁴⁴ Ibid. p. CBP-S&E-24.

⁴⁵ Department of Homeland Security, Customs and Border Protection, “19 CFR Parts 4, 12, 18, et al.: Importer Security Filing and Additional Carrier Requirements; Final Rule,” 73 *Federal Register* 71730-71785, November 25, 2008.

⁴⁶ DHS, *FY2010 Congressional Budget Justification*, CBP-S&E-21, accessed at http://www.dhs.gov/xlibrary/assets/budget_fy2009.pdf.

⁴⁷ Ibid.

in 58 ports. This year, the requested \$165 million for FY2010 includes funding for CSI/ICS, SFI, the Security Filing (SF), and technology acquisition efforts. As noted above, the CBP Budget Justifications indicate a requested increase of nearly \$16 million for the CSI/ICS program for FY2010. However, as noted above, the majority of the requested increase appears targeted to SFI, and thus the FY2010 budget request does not appear to include any additional funding for CSI. Congress may wish to explore in more detail the current and potential relationship between the CSI and SFI programs, and whether or not it would be beneficial to have a separate budgetary presentation for the CSI and SFI programs. Currently, it is difficult to assess what portion of the ICS account is dedicated to the CSI program. Neither H.Rept. 111-157, nor S.Rept. 111-31 shed light on the portion of ICS funding dedicated to the CSI program. P.L. 111-83 also reflects this lack of clarity.

Immigration and Customs Enforcement (ICE)⁴⁸

ICE focuses on enforcement of immigration and customs laws within the United States. ICE develops intelligence to reduce illegal entry into the United States and is responsible for investigating and enforcing violations of the immigration laws (e.g., alien smuggling, hiring unauthorized alien workers). ICE is also responsible for locating and removing aliens who have overstayed their visas, entered illegally, or have become deportable. In addition, ICE develops intelligence to combat terrorist financing and money laundering, and to enforce export laws against smuggling, fraud, forced labor, trade agreement noncompliance, and vehicle and cargo theft. Furthermore, this bureau oversees the building security activities of the Federal Protective Service (FPS), formerly of the General Services Administration. For FY2010, the Administration has proposed moving the FPS from ICE to NPPD in Title III. See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 10** for sub-account-level detail for ICE Salaries and Expenses (S&E) for FY2009 and FY2010.

President's FY2010 Request

The Administration requested \$5,776 in gross budget authority for ICE in FY2010. This represented a 2.7% decrease over the enacted FY2009 level of \$5,928 million (excluding the supplemental). However, this decrease is misleading, because of the proposed transfer of FPS from ICE to NPPD. The Administration requested an appropriation of \$5,458 million in net budget authority for ICE in FY2010, representing a 9% increase over the FY2009 enacted level (including the Supplemental) of \$4,989 million. **Table 10** provides activity-level detail for the Salaries and Expenses account. The request includes the following increases:

- \$70 million for the Southwest Border Enforcement Program;
- \$92 million for the co-location of ICE facilities;
- \$39.1 million for Secure Communities;⁴⁹
- \$12 million for the Detention Facilities Inspection Group;
- \$12 for the Office of State and Local Coordination;
- \$34 million to move data center operations from Department of Justice's centers to DHS centers.

⁴⁸ Prepared by Alison Siskin, Specialist in Immigration Policy, Domestic Social Policy Division.

⁴⁹ Secure communities is a program which seeks to remove all criminal aliens convicted of violent felonies and major drug crimes from the United States.

Table 10. ICE S&E Sub-account Detail

(budget authority in millions of dollars)

Activity	FY2009 Enacted ^a	FY2010 Request ^a	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Management (HQ) & Administration	0	0	486	522	512
Legal Proceeding	240	260	222	222	222
Investigations - Domestic	1,696	1,884	1,643	1,667	1,650
Investigations - International	111	119	113	113	113
Visa Security Program ^b	28	32	32	30	31
Total Investigations	1,835	2,035	1,788	1,810	1,793
Intelligence	64	80	68	72	70
DRO-Custody Operations	1,830	1,967	1,771	1,771	1,771
DRO-Fugitive Operations	241	251	230	230	230
DRO-Criminal Alien Program	209	222	193	193	193
DRO-Alternatives to Detention	67	69	74	64	70
DRO Transportation and Removal Program	281	281	282	282	282
DRO Total	2,628	2,790	2,549	2,539	2,545
Comprehensive Identification and Removal of Criminal Aliens	161^c	212	200	196	200
ICE Salaries and Expenses	4,927^d	5,348	5,313	5,360	5,342

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Note: Tables may not add due to rounding. Although the total funding requests summed to the same amount, CRS noted a discrepancy in the account requests between the Budget Justifications and the Budget in Brief. As such, CRS chose to use the numbers presented by ICE in the budget justifications.

- a. In P.L. 110-329, Congress appropriated \$372 million for Headquarters and Administration. The President's request does not include a specific line item for Headquarters and Administration (now called Management and Administration (M & A)) and puts funding for M & A within the line item for office that is related to the purpose of the funds. Amounts shown in **Table 10** for the FY2009 enacted and the President's request for FY2010 are displayed in this manner. The House-reported and Senate-report versions of the bill shows the M&A amount as a specific line item extracted from the line item for the office that is related to the purpose of the funds.
- b. In the FY2009 appropriations, the Visa Security Program was included as part of Office of Investigations (OI) International Investigations funding
- c. This amount includes funding for the Criminal Alien Program (CAP), Fugitive Operations, Office of Investigations support to locate criminal aliens, and State and Local Programs including 287(g) agreements. The INA §287(g) authorizes the Attorney General to enter into a written agreement with a state, or any political subdivision, to allow state and local law enforcement officers to perform the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States.
- d. Excludes \$20 million from the FY2009 supplemental which was appropriated to aid in the transfer of unaccompanied minors from ICE or CBP custody to the custody of Department of Health and Human Services, Office of Refugee Resettlement (ORR).

House-passed H.R. 2892

House-passed H.R. 2892 would have appropriated \$6,863 million in gross budget authority. Nonetheless, this amount included money from the FPS fees.⁵⁰ Removing the FPS fees as was done in the Administration request, House-passed H.R. 2892 would have appropriated \$5,748 million in gross budget authority, \$28 million less than the President's request. House-passed H.R. 2892 would have appropriated \$5,430 in net budget authority for ICE, which would have represented a decrease of \$28 million, under the Administration's requested amount. Of the appropriated amount, \$2,549 million would have been designated for detention and removal operations; \$1,500 million to identify aliens convicted of a crime who may be deportable and remove them from the United States once they are judged deportable; nearly \$8 million would have been for special operations under §3131 of the Customs Enforcement Act of 1986; \$1 million would have provided compensation awards to informants; \$305,000 would have been used to promote public awareness of the child pornography tipline and anti-child exploitation activities; \$11 million would have been designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens; \$5 million would have been used to facilitate agreements under §287(g) of the INA; \$16 million would have been targeted for enforcement of laws against forced child labor; and almost \$7 million for the Visa Security Program.

According to H.Rept. 111-157, the appropriated monies would have included the President's budget requested increases of \$18 million for state and local programs; \$50 million for custody operations; \$12 million for the Office of Professional Responsibility. In addition, according to H.Rept. 111-157, House-passed H.R. 2892 would have appropriated over the President's requested budget:

- \$28 million for OI domestic investigations;
- \$28 million for the Southwest Border Enforcement Initiative;⁵¹ and
- \$10 million for alternatives to detention.

In addition, according to H.Rept. 111-157, House-passed H.R. 2892 would not provide any funds for ICE data center migration activities.

Senate-passed H.R. 2892

Senate-passed H.R. 2892 would have appropriated \$5,750 million in gross budget authority, \$26 million less than the Administration request. Senate-passed H.R. 2892 would appropriate \$5,445 million in net budget authority for ICE in FY2010, \$13 million less than the Administration request. **Table 10** provides activity-level detail for the Salaries and Expenses account.

Of the appropriated amount in Senate-passed H.R. 2892, \$2,539 million would be designated for detention and removal operations; \$1,000 million to identify aliens convicted of a crime who may be deportable and remove them from the United States once they are judged deportable; \$1 million would provide compensation awards to informants; \$.3 million would be used to promote public awareness of the child pornography tipline and anti-child exploitation activities; \$5 million would be used to facilitate agreements under §287(g) of the INA; \$11 million would be designated to fund or reimburse other federal agencies for the cost of care, and repatriation of

⁵⁰ As mentioned above for FY2010, the Administration has proposed moving the FPS from ICE to NPPD.

⁵¹ This includes \$20 million (\$10 million each) for investigations of transnational gangs and investigations of cross-border weapons smuggling; \$5 million for drug smuggling investigations, and \$3 million to expand human smuggling and trafficking investigations.

smuggled aliens; \$16 million would be targeted for enforcement of laws against forced child labor; and nearly \$7 million would be used to fund the Visa Security Program.

According to S.Rept. 111-31, Senate-passed H.R. 2892 would fully fund the President's budget request for increases over the FY2009 appropriate amounts for: the law enforcement support center (\$35 million); 287(g) agreements (\$12 million); and Secure Communities (\$196 million). In addition, S.Rept. 111-31 recommended an increase over the President's budget request of:

- \$45 million for ICE's role in the Southwest Border Enforcement Initiative;⁵²
- \$2.1 million (4 FTEs) for the Office of Personal Responsibility (total increase of \$15 million); and
- \$10 million (50 FTEs) for worksite enforcement actions.

S.Rept. 111-31 also recommended a decrease over the Administration request of: \$35 million for the co-location of ICE facilities;⁵³ and \$10 million for data center migration.

P.L. 111-83

P.L. 111-83 appropriated \$5,742 million in gross budget authority, \$34 million less than the Administration request. P.L. 111-83 appropriated \$5,437 million in net budget authority for ICE in FY2010, \$21 million less than the Administration request.

Of the appropriated amount in P.L. 111-83, \$2,545 million was designated for detention and removal operations; \$1,500 million to identify aliens convicted of a crime who may be deportable and remove them from the United States once they are judged deportable; \$1 million would provide compensation awards to informants; \$.3 million was to promote public awareness of the child pornography tipline and anti-child exploitation activities; \$5 million was to facilitate agreements under §287(g) of the INA; \$11 million was designated to fund or reimburse other federal agencies for the cost of care, and repatriation of smuggled aliens; \$16 million was targeted for enforcement of laws against forced child labor; and \$7 million was for funding the Visa Security Program.

Issues for Congress

ICE is responsible for many divergent activities due to the breadth of the civil and criminal violations of law that fall under ICE's jurisdiction. As a result, how ICE resources are allocated in order to best achieve its mission is a continuous issue. In addition, part of ICE's mission includes locating and removing deportable aliens, which involves determining the appropriate amount of detention space as well as which aliens should be detained. Although many content that the priority should be placed on removing aliens who have committed crimes in the United States, in FY2008 less than a third of those deported by ICE were convicted of a criminal offense.⁵⁴ Furthermore, others argue that the prioritization of criminal aliens should not come at the expense of the ICE's other responsibilities, such as terrorist travel and worksite enforcement

⁵² \$20 million for additional Border Enforcement Security Task Forces (BESTs); \$20 million for counter-proliferation and gang investigations; and \$5 million to augment bulk cash smuggling investigations.

⁵³ House-passed H.R. 2892 stated that no funds could be used to co-locate offices until the Secretary of DHS submits a report to the House and Senate Appropriations Committees on a nationwide plan to implement the Alternatives to Detention program.

⁵⁴ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2010*, Report to accompany H.R. 2892, 111th Cong., 1st sess., June 16, 2009, H.Rept. 111-157, p. 8.

investigations.⁵⁵ Additionally, in recent years there has been debate concerning the extent to which state and local law enforcement should aid ICE with the identification, detention, and removal of deportable aliens.

Detention and Removal Operations

Detention and Removal Operations (DRO) in ICE provide custody management of the aliens who are in removal proceedings or who have been ordered removed from the United States.⁵⁶ DRO is also responsible for ensuring that aliens ordered removed actually depart from the United States. Many contend that DRO does not have enough detention space to house all those who should be detained. A U.S. Department of Justice, Office of the Inspector General study released in 2003 found that almost 94% of those detained with final orders of removal were deported, whereas only 11% of those not detained, who were issued final orders of removal, left the country.⁵⁷ Concerns have been raised that decisions regarding which aliens to release and when to release them may be based on the amount of detention space, not on the merits of individual cases, and that the amount of space may vary by area of the country leading to inequities and disparate policies in different geographic areas. Furthermore, there have been concerns raised about the adequacy of medical care received by aliens in detention.⁵⁸ The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458, §5204) authorized, subject to appropriations, an increase in DRO bed space of 8,000 beds for each year, FY2006-FY2010. The total number of FY2009 detention beds was 33,400, and the President's FY2010 budget requested an increase of \$36 million to maintain current amount of bed space. S.Rept. 111-31 stated that DHS should maintain 33,400 beds throughout FY2010.

In addition, as requested by the Administration, Senate-passed H.R. 2892 would give the Secretary of DHS the authority to dispose of ICE owned detention facilities subject to such conditions as necessary to protect government interests and meet the requirements of the Detention and Removal program. Funds from the sale of these facilities would be deposited in offsetting fees account. Nonetheless, House-passed H.R. 2892 does not provide this authority, and H.Rept. 111-157 states that this proposal is "unwise."⁵⁹ In addition, House-passed H.R. 2892 would prohibit funds to be used to contract at any detention facility where the two most recent overall performance evaluations were less than "adequate."

P.L. 111-83 directs that ICE shall maintain a level of 33,400 bed spaces throughout FY2010. Additionally, P.L. 111-83 prohibits the expenditure of funds on contracts with detention centers that repeatedly fail to comply with ICE detention standards.

⁵⁵ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2010*, Report to accompany H.R. 2892, 111th Cong., 1st sess., June 16, 2009, H.Rept. 111-157, p. 228.

⁵⁶ For more information on detention issues see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin. Under the INA aliens can be removed for reasons of health, criminal status, economic well-being, national security risks, and others that are specifically defined in the act.

⁵⁷ Department of Justice, Office of the Inspector General, *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders*, Report I-2003-004, February 2003.

⁵⁸ For more on the issue of detainee medical care, see CRS Report RL34556, *Health Care for Noncitizens in Immigration Detention*, by Alison Siskin.

⁵⁹ H.Rept. 111-157 also noted that ICE reported that it would use some of the appropriated funds for Automation Modernization to initiate the acquisition of an electronic medical records system for detainees.

State and Local Law Enforcement⁶⁰

Currently, the INA provides limited avenues for state enforcement of its civil provisions. One of the broadest grants of authority for state and local immigration enforcement activity stems from INA §287(g), which authorizes the Attorney General to enter into a written agreement with a state, or any political subdivision, to allow state and local law enforcement officers to perform the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. The enforcement of immigration by state and local officials has sparked debate among many who question what the proper role of state and local law enforcement officials should be in enforcing federal immigration laws. Many have expressed concern over proper training, finite resources at the local level, possible civil rights violations, and the overall impact on communities. Nonetheless, some observers contend that the federal government has scarce resources to enforce immigration law and that state and local law enforcement entities should be utilized. Congress appropriated \$54 million for the 287(g) program for FY2009. The President's FY2010 request for ICE includes \$5 million for 287(g) agreements which is the FY2008 funding level; however, additional funding may be available through appropriations to the Office of State and Local Government Coordination. House-passed H.R. 2892 and Senate-passed H.R. 2892 also would appropriate \$5 million for 287(g) agreements. In addition, both H.Rept. 111-157 and S.Rept. 111-31 state that House and Senate passed bills would fully fund the President's FY2010 request for Office of State and Local Government Coordination.⁶¹ P.L. 111-83 fully funds the Administration's request for State and Local Programs, and provides \$68 million for the 287(g) program within this funding. This amount is in addition to the \$5 million statutorily dictated for the 287(g) program.

Federal Protective Service⁶²

The Federal Protective Service (FPS), now within FEMA's National Protection and Programs Directorate (NPPD)⁶³, is responsible for the protection and security of federally owned and leased buildings, property, and personnel.⁶⁴ In general, FPS operations focus on security and law enforcement activities that reduce vulnerability to criminal and terrorist threats.⁶⁵ FPS protection and security operations include all-hazards based risk assessments; emplacement of criminal and terrorist countermeasures, such as vehicle barriers and close-circuit cameras; law enforcement response; assistance to federal agencies through Facility Security Committees; and emergency and safety education programs. FPS also assists other federal agencies with additional security such as the U.S. Secret Service (USSS) at National Special Security Events (NSSE).⁶⁶ FPS is the lead Government Facilities Sector Agency for the National Infrastructure Protection Plan

⁶⁰ This section adapted from CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Lisa M. Seghetti, Karma Ester, and Michael John Garcia.

⁶¹ H.Rept. 111-157 stated that within the appropriated amount for State and Local programs, \$68 million would be for 287(g) agreements. In addition, House-passed H.R. 2892 would prohibit funds for 287(g) agreement to continue for any delegation of law enforcement authority if the DHS IG determines that the authority delegated under a 287(g) agreement has been violated.

⁶² Prepared by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, Government and Finance Division.

⁶³ FPS was transferred to NPPD from ICE following the enactment of the FY2010 DHS appropriations, P.L. 111-83.

⁶⁴ 40 U.S.C. 1315.

⁶⁵ For more information on FPS, see CRS Report RS22706, *The Federal Protective Service and Contract Security Guards: A Statutory History and Current Status*, by Shawn Reese.

⁶⁶ For information on NSSEs, see CRS Report RS22754, *National Special Security Events*, by Shawn Reese.

(NIPP).⁶⁷ Currently, FPS employs approximately 1,225 law enforcement officers, investigators, and administrative personnel, and administers the services of approximately 15,000 contract security guards.⁶⁸

President's FY2010 Request

The FPS congressional budget justification proposed \$640 million for FPS in FY2010 to be collected in security fees (which is not an appropriation, but an accounting of other agencies' funding for security fees), the same amount Congress enacted in FY2009. FPS estimated a collection of security leasing fees⁶⁹ to provide \$420 million for basic security operations and \$220 million for building specific security operations.⁷⁰ However, the budget appendix displayed an amount of \$1,031 million and CRS was unable to determine the difference in the congressional justification amount of \$640 million and the \$1,031 million in the budget appendix. Additionally, the Administration proposed to maintain FPS 1,225 positions, and approximately 15,000 contract security guards in FY2010.⁷¹ Finally, the FY2010 budget request proposed to transfer FPS to the NPPD of DHS, which the Senate-passed H.R. 2892 also proposed.

House-passed H.R. 2892

The House-passed H.R. 2892 authorized security fees credited to the FPS account in FY2010 that would have been available until expended for necessary expenses related to the protection of federally owned and leased facilities. The FPS would have been required to maintain no fewer than 1,200 FTE staff and 900 FTE law enforcement officers, inspectors, Area Commanders, and Special Agents.

Senate-passed H.R. 2892

The Senate-passed H.R. 2892 authorized security fees credited to the FPS account in FY2010 that would have been available until expended for necessary expenses related to the protection of federally owned and leased facilities. Like the House-passed H.R. 2892, the FPS was required to maintain no fewer than 1,200 FTE staff and 900 FTE law enforcement officers, inspectors, Area Commanders, and Special Agents.

P.L. 111-83

Congress determined that FPS is authorized to collect security fees for the necessary expenses related to the protection of federally owned and leased buildings and for FPS operations. Additionally, Congress required that the DHS Secretary and the Director of the Office of Management and Budget certify, in writing to the House and Senate Appropriations Committees, that FPS operations will be fully funded in FY2010 through the collection of security fees. FPS is required to maintain no fewer than 1,200 full-time equivalent staff and 900 full-time police officers, investigators, inspectors, area commanders, and special agents. The conferees supported the realignment of FPS from ICE to NPPD and "expect" the DHS Secretary and Deputy Secretary

⁶⁷ Information on the NIPP is available at http://www.dhs.gov/xprevprot/programs/editorial_0827.shtm.

⁶⁸ U.S. Department of Homeland Security, National Protection and Programs Directorate, *Federal Protective Service: Fiscal Year 2010 Congressional Justification*, Washington, DC, May 2009, pp. FPS-1.

⁶⁹ The rate for basic security services is \$0.66 per square foot of General Service Administration controlled property.

⁷⁰ The rate for building specific security operations is based on individual building and agency needs.

⁷¹ U.S. Department of Homeland Security, National Protection and Programs Directorate, *Federal Protective Service: Fiscal Year 2010 Congressional Justification*, Washington, DC, May 2009, pp. FPS-1 – FPS-2.

to ensure an “effective” transition. DHS managers overseeing this transition are required to brief the House and Senate Appropriations Committees on the progress of the transition at least semi-annually, starting no later than January 15, 2010. Finally, conferees expressed concern about FPS’s ability to protect federal buildings.

Federal Protective Service Issues for Congress

There are potential issues Congress may wish to consider when conducting oversight of FY2010 FPS activities, including FPS operations and the transfer of FPS from ICE to NPPD.

FPS Operations

In July 2009, the Government Accountability Office (GAO) completed and reported a survey that indicated that 82% of FPS customers do not use the agency as their primary law enforcement agency in emergency situations. Additionally, the customers informed GAO that they primarily rely on other entities such as local law enforcement, the U.S. Marshals Service, or the Federal Bureau of Investigation. GSA also informed GAO that it has not been satisfied with the level of protection and security provided by FPS since being transferred to DHS. According to GSA officials, FPS has not been responsive and timely in providing building security assessments for new leases. GAO, however, stated FPS has taken steps to improve customer service through education and outreach initiatives.⁷²

When FPS had reduced its workforce in FY2007 from 1,400 to 1,100 employees, GAO had issued a report that stated that this reduction in FPS’s staff resulted in the degradation of security at federal facilities and increased the risk of crime or terrorist attacks. GAO concluded that the decision by FPS to eliminate proactive security patrols at federal facilities resulted in FPS law enforcement personnel not being able to conduct security operations.⁷³ Subsequently, the number of FPS employees increased by 125 to 1,225 in FY2009. In FY2010, FPS does not intend to decrease the number of employees consistent with the provisions of P.L. 111-83 (FY2010 DHS appropriations).

FPS Transfer to NPPD

Congress transferred FPS from ICE to NPPD with the enactment of P.L. 111-83. The Administration stated that this will allow ICE, which previously administered the FPS, to focus its law enforcement operations on protecting the nation by targeting the people, money, and materials that support terrorists and criminals relating to the nation’s borders. Also, the Administration stated that FPS would be better suited in NPPD given the directorate’s responsibility of implementing the National Infrastructure Protection Program (NIPP). FPS, as the NIPP’s Government Facilities Sector agency, is an infrastructure protection entity; by the transfer of FPS to NPPD, the Administration expects to “solidify” NPPD as DHS’s lead for critical infrastructure.⁷⁴ The Administration plan is based primarily on (1) allowing ICE to focus its operations on border security, and (2) reinforcing or solidifying NPPD’s role in infrastructure protection. Both of these reasons may be considered valid considering the increased congressional and national interest in ICE and border security, and, to what appears to be, a

⁷² U.S. Government Accountability Office, *Homeland Security: Federal Protective Service Should Improve Human Capital Planning and Better Communicate with Tenants*, GAO-09-749, July 2009, pp. 5-6.

⁷³ U.S. Government Accountability Office, *Homeland Security: The Federal Protective Service Faces Several Challenges That Hamper Its Ability to Protect Federal Facilities*, GAO-08-914T, June 2008, p. 12.

⁷⁴ U.S. Department of Homeland Security, National Protection and Programs Directorate, *Federal Protective Service: Fiscal Year 2010 Congressional Justification*, Washington, DC, May 2009, p. FPS-1.

logical location for DHS's infrastructure protection law enforcement agency. Conversely, one could argue that NPPD does not include any other law enforcement operational entity that has a similar infrastructure protection responsibility.

Transportation Security Administration (TSA)⁷⁵

The TSA was created by the Aviation and Transportation Security Act (ATSA, P.L. 107-71), and it was charged with protecting air, land, and rail transportation systems within the United States to ensure the freedom of movement for people and commerce. In 2002, the TSA was transferred to DHS with the passage of the Homeland Security Act (P.L. 107-296). The TSA's responsibilities include protecting the aviation system against terrorist threats, sabotage, and other acts of violence through the deployment of passenger and baggage screeners; detection systems for explosives, weapons, and other contraband; and other security technologies. The TSA also has certain responsibilities for marine and land modes of transportation including assessing the risk of terrorist attacks to all non-aviation transportation assets, including seaports; issuing regulations to improve security; and enforcing these regulations to ensure the protection of these transportation systems. TSA is further charged with serving as the primary liaison for transportation security to the law enforcement and intelligence communities. See **Table 8** for account-level detail for all of the agencies in Title II, and **Table 11** for sub-account-level detail for TSA for FY2009 enacted levels and FY2010 amounts specified in the President's request, the House-passed and Senate-passed bills, and the enacted amounts in P.L. 111-83.

President's FY2010 Request

The President's request seeks total gross funding of \$7,774 million in FY2010 for the TSA, a nearly 12% increase over FY2009 enacted levels. The President requested an increase of 12% for Aviation Security, and a twofold increase in Surface Transportation Security funding, totaling \$128 million compared to the FY2009 enacted level of \$63 million. The additional funding for Surface Transportation Security would primarily go toward deploying 15 additional Visual Intermodal Prevention and Response (VIPR) teams—which consist of TSA inspectors, officers, and canine teams that patrol surface modes (highway, rail, and transit), screen passengers, and act as a visible deterrent—at an added cost of \$50 million.

The largest increase to Aviation Security funding specified in the President's Request is a \$563 million increase for explosives detection systems (EDS) and explosives trace detection (ETD) systems purchase and installation to accelerate the implementation of optimal checked baggage explosives screening configurations. In addition to FY2009 appropriations of \$294 million for this function, the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) provided for \$1,000 million for Aviation Security, of which \$700 million was designated by the TSA for EDS and ETD procurement and installation, to be expended over a two-year period. The combination of these additional funds, along with funding provided through the Aviation Security Capital Fund (ASCF), addresses concerns over the lengthy and costly process of optimizing checked baggage screening systems.

In contrast to the increase requested for checked baggage explosives detection system acquisition and installation, the President's request calls for a funding reduction of \$121 million for Checkpoint Support compared to the FY2009 enacted level. Checkpoint Support funds are primarily intended for modernizing checkpoint screening technologies and improving capabilities

⁷⁵ Prepared by Bart Elias, Specialist in Aviation Safety, Security, and Technology, Resources, Science, and Industry Division.

to detect explosives on passengers and carry-on items. The proposed reduction is in response to additional funds provided in FY2009 by Congress above the President's request plus the designation of an additional \$300 million for Checkpoint Support activities specified in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). While the Bush Administration similarly sought to reduce Checkpoint Support activities in FY2009, Congress increased the FY2009 funding for checkpoint support to \$250 million to match the amount provided in FY2008 through the Airport Checkpoint Screening Fund established by the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53).

The President's request has proposed establishing a new certified cargo screening program to fulfill the mandate of screening 100% of cargo placed on passenger airplanes by August 2010. It also calls for establishing a program to implement and oversee the Large Aircraft Security Program (LASP) to regulate security of large general aviation (GA) aircraft operations. The President's request also seeks \$10 million in new funding for aviation security to provide for security fee collections to carry out security threat assessments of airport and airline workers requiring Security Identification Display Area (SIDA) credentials for airport access.

The President's request also seeks a \$76 million increase, a 65% increase over FY2009 enacted levels for Transportation Threat Assessment and Credentialing. The majority of this increase, \$64 million, is slated for the Vetting Infrastructure Modernization initiative, which is designed to implement a universal fee mechanism and a common vetting infrastructure to reduce duplicative background checks and fees for transportation workers and bring TSA modal vetting programs in line with the strategic goals of the DHS Credentialing Framework Initiative (CFI).

Table 11. TSA Gross Budget Authority, by Budget Activity

(budget authority in millions of dollars)

Budget Activity	FY2009 Enacted ^a	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Aviation Security	4,755	5,310	5,266	5,233	5,214
Screening Partnership Program (SPP)	151	150	150	150	150
Passenger & Baggage Screening (PC&B)	2,716	2,789	2,789	2,759	2,759
Screener Training & Other	197	203	204	203	205
Checkpoint Support	250	129	129	129	129
EDS/ETD Purchase/Installation	294	857	800	802	778
Screening Technology	306	327	317	327	317
Operation Integration	21	21	21	21	21
Aviation Regulation and Other Enforcement	245	254	254	254	254
Airport Management, IT, and Support	402	448	454	448	454
FFDO & Crew Training	25	25	25	25	25
Air Cargo Security	123	108	123	115	123
Airport Perimeter Security	4	—	—	—	—

Budget Activity	FY2009 Enacted ^a	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Implementing P.L. 110-53	20	—	—	—	—
Indirect Air Cargo—Fee ^b	—	[3] ^c	—	[3] ^c	—
Certified Cargo Screening Program	—	[5] ^c	— ^d	[5] ^c	—
Large Aircraft Security Plan	—	[2] ^c	— ^d	[2] ^c	—
Security Identification Display Area Checks	—	[10] ^c	— ^d	[10] ^c	—
Federal Air Marshal Service	819	860	860	860	860
Management and Administration	725	763	763	763	763
Travel and Training	94	98	98	98	98
Threat Assessment and Credentialing (TTAC)	116	192	172	172	172
Secure Flight	82	84	84	84	84
Other/ TTAC Admin. & Ops.	34	108	88	88	88
Credentialing Fees	40	28	45	28	48
Registered Traveler Program	10	—	—	—	—
TWIC—Fee	9	9	9	9	9
HAZMAT CDL—Fee	18	15	15	15	15
Certified Cargo Screening Program—Fee	—	—	5	—	5
Large Aircraft Security Plan— Fee	—	—	2	—	2
Security Identification Display Area Checks—Fee	—	—	10	—	10
Indirect Air Cargo—Fee ^b	—	[3] ^c	—	[3] ^c	3
Alien Flight School—Fee	4	4	4	4	4
Surface Transportation Security	50	128	103	143	111
Operations and Staffing	25	42	42	42	42
Security Inspectors	25	86	61	100	68
Transportation Security Support	948	1,005	993	1,000	1,002
Intelligence	22	28	28	28	28
Headquarters Administration	235	249	249	249	249
Human Capital Services	218	226	226	226	226
Information Technology	473	501	490	496	498
Sensitive Security Information—Fee	—	—	—	—	—

Budget Activity	FY2009 Enacted ^a	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Aviation Security Capital Fund (ASCF)	250	250	250	250	250
TSA Gross Total	6,978	7,774	7,689	7,685	7,656

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Notes: Tables may not add due to rounding. **Table 11** Includes Alien Flight School funding of \$4 million which is not included in **Tables 5 or 8**.

- a. FY2009 appropriated amounts specified in this table include TSA distributions of an additional \$20 million designated for implementing various requirements specified in P.L. 110-53. These distributions add roughly \$4 million to Aviation Security under Aviation Regulation and Other Enforcement; \$14 million to Surface Transportation Security (\$9 million for Operations and Staffing and \$5 million for Security Inspectors); and roughly \$3 million to Transportation Security Support for Intelligence activities above levels specified in P.L. 110-329 for these specific activities (See DHS FY2010 Congressional Justification, p. TSA-Aviation-56).
- b. The Indirect Air Cargo Fee, charged for conducting background checks of security workers in the air cargo supply chain, was authorized under FY2004 DHS Appropriations Act (P.L. 108-90) to fulfill requirements of the TSA's Air Cargo Security Final Rule. The FY2009 estimated fee collections for this activity are reflected in this table and are included in the totals for Aviation Security.
- c. Bracketed amounts indicate activities wholly funding through newly proposed fee collections that are not included in the subtotal for Aviation Security or in the TSA gross total.
- d. See amounts listed under Credentialing Fees.

House-Passed H.R. 2892

The House-passed bill specified a gross total funding for TSA of \$7,689 million, \$85 million below the President's request. House-passed amounts for aviation security functions are largely in line with those specified in the President's request. However, the House-passed bill specifies \$800 million for EDS/ETD purchase and installation, \$57 million less than the President's request. The reduced amount passed by the House reflects anticipated savings of between \$50 million and \$150 million through design improvements such as the use of pre-engineered structures for in-line EDS solutions.⁷⁶ The House-passed bill also specifies \$11 million less than the President's request for screening technology maintenance and utilities reflecting anticipated cost savings from renegotiating long-term maintenance contracts for screening technologies to address escalating maintenance costs. The House-passed bill seeks \$123 million for air cargo security, \$15 million more than the President's request. The additional funds are intended for hiring additional domestic air cargo inspectors, international air cargo inspectors deployed overseas, and canine teams that will work predominantly in the air cargo arena.

The House-passed bill specifies \$103 million for surface transportation security, \$54 million above FY2009 enacted levels, but \$25 million less than the President's request. Of this amount, \$61 million is for rail security inspectors and canine teams, and \$42 million is for surface transportation staffing and operations. The bill supports the continued use of VIPR teams, but report language (see H.Rept. 111-157) expressed concern over the role of TSA inspectors on those teams and the effectiveness of VIPR training exercises and the TSA's failure to report on methods for allocating VIPR team resources and personnel among the various transportation modes. The committee, therefore, did not fully support the proposed expansion of the VIPR teams included in the President's request, instead specifying half of the \$50 million requested.

⁷⁶ See H.Rept. 111-157 for further details.

For TTAC, the House-passed bill specifies an amount that is \$20 million below the President's request, providing \$88 million instead of the requested \$108 million for crew and other vetting programs. The House committee however reported that this program fully funds annual increases for meeting vetting requirements of the 9/11 Act (P.L. 110-53) and provides funding for the 33 new positions requested. With regard to Transportation Security Support, the House-passed bill provides \$12 million less than the President's request for information technology functions, which represents the elimination of funding for data center migration in response to concerns raised by the DHS Office of Inspector General regarding this activity.

Senate-Passed H.R. 2892

The Senate-passed bill specifies a gross total of \$7,685 million for the TSA, roughly in line with the House-passed amount, but \$89 million below the President's request. Like the House, the Senate-passed bill does not fully fund the requested increase for EDS/ETD purchase and installation. Instead, it specifies \$802 million, \$2 million more than the House-passed amount, but \$55 million less than the President's request, citing lower-than-expected installation costs for in-line EDS systems. In line with the House, the Senate bill provides \$115 million for air cargo security. The bill would withhold \$20 million in TSA headquarters administration funding until the FY2010 expenditure plan for air cargo security funds is submitted to the Senate Committee on Appropriations, citing the TSA's failure to submit such a plan for FY2009.

Unlike the House, the Senate-passed bill seeks to provide an additional \$14 million above the President's request for surface transportation security. Whereas the House did not fully support the requested expansion of VIPR team personnel and resources, the Senate-passed bill fully funds this request. It also provides an additional \$14 million for 100 new surface transportation inspectors, citing a DHS Office of Inspector General report which concluded that TSA field offices were thinly staffed with surface transportation security inspectors.

With respect to TTAC, the Senate-passed bill parallels the House-passed bill, specifying \$20 million less than the President's request. The committee explained that this reduction reflects a decision not to fund TSA efforts to modernize and integrate its vetting and credentialing infrastructure. While the committee supports the modernization efforts, it concluded that several key strategic and acquisition decisions remain to be made regarding this project before it can be funded at the requested level. With respect to transportation security support information technology spending, the Senate-passed bill partially funds the TSA's proposed data center migration, but at a level that is \$5 million below the request reflecting the committee's conclusion that the additional funds would not be expended until FY2011.

Enacted P.L. 111-83

P.L. 111-83 provides \$7,656 million for the TSA, roughly 9.7% above the FY2009 enacted level, but slightly less than the President's FY2010 request and the amounts specified in the initial House-passed and Senate-passed bills. The Act provides \$5,214 million for Aviation Security, \$2,100 million of which is anticipated to be funded through passenger security fees, airline security infrastructure fees, and other miscellaneous fee collections.

P.L. 111-83 specifies \$778 million for EDS/ETD purchase and installation, in addition to the \$250 million mandatory deposit into the Aviation Security Capital Fund (ASCF) to fund airport grants, primarily for EDS integration. At least 28% of the appropriated funds must be made available for EDS purchase and installation at medium- and small-sized airports. The TSA is to move to fully competitive EDS and checkpoint screening technology procurement processes by the end of FY2010, and it is encouraged to use pre-engineered structures for EDS integration and

optimization in an effort to reduce costs and accelerate construction projects. With regard to checkpoint technology deployment under the checkpoint support budget activity, P.L. 111-83 provides \$129 million, as requested, which is \$121 million less than the FY2009 amount. The Act provides \$123 million for air cargo security, as specified in the House-passed bill, which is \$15 million above the President's request.

The Act provides \$111 million for Surface Transportation Security, \$17 million less than the President's request, but \$61 million more than the FY2009 amount; \$7 million is designated for hiring 100 new surface transportation inspectors, and \$25 million is for creating 15 new Visible Intermodal Protection and Response (VIPR) teams. The TSA must provide an expenditure plan for these funds, detailing how and where these new VIPR teams will be deployed, before these funds may be expended.

P.L. 111-83 specifies \$172 million for TTAC, \$20 million less than the requested amount but equal to the amounts specified in both the House-passed and Senate-passed bills. This amount includes \$84 million for Secure Flight, as requested. The Act also includes \$48 million for fee-based credentialing programs and moves all fee-funded vetting activities into this account. The Act also provides \$1,002 million for Transportation Security Support, roughly in line with the President's request, and \$860 million for the Federal Air Marshals Service (FAMS), as requested.

TSA Issues for Congress

Significant issues considered during debate over TSA appropriations included funding for checkpoint screening technologies; funding to optimize checked baggage screening system configurations; strategies and resources for meeting the mandate to screen 100% of cargo placed on passenger airliners; and funding needs and oversight of the TSA's efforts to operationally deploy the long-delayed Secure Flight passenger prescreening system.

Funding for Checkpoint Screening Technologies

Funding for Checkpoint Support, and in particular the strategy and budgetary resources for deploying new checkpoint screening technologies emerged as a specific issue of interest to Congress during the FY2010 DHS appropriations debate. Congress provided \$250 million in FY2008 and in FY2009, significant increases above the President's request in those years, to accelerate the deployment of technologies to screen passengers and carry-on items for explosives. Also, Congress provided an additional \$1,000 million in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) for checked baggage and checkpoint explosives detection equipment, of which the TSA designated \$300 million for the acquisition and deployment of checkpoint explosives detection technologies, primarily whole-body imaging (WBI) technologies. The FY2010 President's request specified a 48% reduction compared to FY2009 appropriated amounts for Checkpoint Support. Both the House-passed and Senate-passed bills specify funding for Checkpoint Support at the requested level.

Controversies remain over the choice of checkpoint screening technology and the application of that technology. While the TSA has abandoned the acquisition and operational utilization of trace detection portal (puffer) machines in favor WBI devices, privacy rights organizations and some Members of Congress have raised concerns over the privacy implications of these technologies. The Aircraft Passenger Whole-Body Imaging Limitations Act of 2009 (H.R. 2027) would prohibit the use of WBI for routine passenger screening, allow passengers to opt for a pat down search in lieu of whole-body screening, and would prohibit the storage, transfer, sharing, or copying of images generated by whole-body imagers. The TSA has taken steps to address privacy concerns including implementing privacy filters to degrade the image, reviewing images remotely, and not

storing electronic WBI images. The Transportation Security Administration Authorization Act (H.R. 2200) would require the TSA to submit a report to the congressional oversight committees on the WBI test program, including specifics on how privacy protections were integrated. Privacy issues identified during field testing of WBI technologies may influence the deployment strategy and operational use of WBI systems and has been an issue of particular interest in the context of appropriations for checkpoint screening technologies. H.Rept. 111-157 would require the TSA to provide its strategy for protecting passenger privacy with respect to WBI screening within 45 days of enactment, while S.Rept. 111-31 would require it to be submitted within 60 days.

Conference report language (See H.Rept. 111-298) accompanying P.L. 111-83 requires the TSA to report to appropriations committees on its strategy and methods for protecting passenger privacy in carrying out its WBI program. The report language specifies that, at a minimum, the strategy is to include offsite monitoring; privacy safeguards using software and other methods; procedures for preventing and prohibiting the storage, transfer, and copying of WBI images; and a concept of operations for handling passengers who opt for physical searches (e.g., pat-downs) instead of WBI screening. The Act requires the TSA to submit this information within 60 days of enactment, as specified in the Senate report language. The TSA is also required to submit an airport-by-airport expenditure plan for Checkpoint Support, and must move to a fully competitive procurement process for Checkpoint Support by the end of FY2010.

Optimizing Airport Baggage Screening System Configurations

According to the TSA, only 68 out of 277 (roughly 25%) airports in need of additional EDS/ETD deployment and facility modifications have fully optimized their EDS and ETD system configurations. Appropriations provided through FY2009 appropriations and the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) are funding 62 checked baggage explosives screening optimization projects. However, many more airports are in need of funding for EDS/ETD optimization. The President's request sought roughly \$563 million over FY2009 appropriated levels in FY2010. The TSA believes that this will allow it to fund 24 additional airport projects, compared to only four if FY2010 appropriations are maintained at FY2009 levels. Congress has considered whether this continued emphasis on accelerating EDS/ETD system configuration at airports is appropriate and feasible. Congress has also considered whether the TSA has an appropriate strategy in place to work with airports to successfully carry out these projects, and whether the TSA can adequately conduct oversight of airport projects being carried out under an accelerated timetable to avoid poor resource allocation and possible instances of fraud, waste, or abuse.

Both the House-passed and Senate-passed bills included large increases for EDS/ETD purchase and installation compared to FY2009 enacted levels. Both the House-passed and Senate-passed bills, however, specified amounts below the President's request, reflecting anticipated cost savings from improved engineering and construction practices. S.Rept. 111-31 directs the TSA to submit a report concurrent with its FY2011 budget submittal detailing the expected manpower savings that will be derived from the investment of optimized and in-line EDS configurations. H.Rept. 111-157 expressed concern over the escalating costs of aging EDS systems and other screening technologies, which has increased by 7% from FY2009 to FY2010. It directs the TSA to expeditiously renegotiate its long-term maintenance contract, and reduces funding for screening technology maintenance and utilities by \$11 million reflecting the anticipated cost savings of the new contract.

P.L. 111-83 provides \$778 million for EDS/ETD purchase and installation. While this amount is considerably less than that requested, it is \$484 million more than the amount appropriated in FY2009. In addition to the amounts appropriated for FY2010, Section 516 of P.L. 111-83

specifies that any prior year funds appropriated for TSA Aviation Security, Administration, and Transportation Security Support that are deobligated or otherwise recovered shall be made available solely for the acquisition and installation of EDS equipment, and air cargo, baggage, and checkpoint screening systems. H.Rept. 111-298 specifies that the TSA is to implement a fully competitive EDS procurement process by the end of FY2010. The report also encourages the TSA to further consider options for using pre-engineered structures to optimize EDS installations at airports. Pre-engineered solutions may offer an opportunity to accelerate EDS optimization and lower the costs for integrating EDS equipment with baggage processing systems at some airports. The report also encourages the TSA to continue its assessment of the feasibility of consolidating checkpoint and checked baggage screening at medium- and small-sized airports. At least 28% of the total appropriated for EDS/ETD purchase and installation is to be designated for deploying EDS machines at medium- and small-sized airports. The Act also provides \$317 million for screening technology maintenance, including both checkpoint and checked baggage screening equipment. The conference report encourages the TSA to work with vendors to ensure that screening equipment, such as EDS, can achieve both greater throughput and lower maintenance costs in the future.

Meeting the Mandate for 100% Cargo Screening on Passenger Flights

The Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mandated the physical screening or inspection of all cargo items placed onboard passenger airliners using specified methods by August 2010. The Act further specified that 50% of such cargo must be inspected using these methods by an interim deadline of February 2009. While the TSA claims to be meeting the interim objective, there has been increasing concern that TSA may lack the technology and fiscal resources to meet the 100% screening mandate by August 2010.⁷⁷ Industry experts warn that trying to stick to the deadline may result in suboptimal solutions that could impede the flow of commerce, particularly for inbound international flights.⁷⁸

Congressional appropriators considered whether requested funding levels for air cargo security will be sufficient to meet the mandate for screening all cargo placed on passenger airliners by August 2010. More broadly, Congress has been made aware of concerns over the TSA's approach to meeting this mandate by relying mainly on private sector entities to carry out physical screening and inspections and implement enhanced supply chain security measures in cases where the screening is conducted off-airport. Congress has also deliberated over TSA investment in cargo screening technologies, canine teams, and other acceptable screening methods compared to cargo industry investment to deploy and operate cargo screening systems.

Additional funds in House-passed H.R. 2892 for Air Cargo Security were included to hire additional domestic air cargo inspectors, test and evaluate emerging screening technologies for air cargo, and convert 35 canine teams from local law enforcement to the TSA primarily for use in air cargo screening. The House committee expressed specific concerns over the lingering challenges for screening inbound international cargo shipments placed on passenger aircraft. Funding for air cargo security above the requested amount is designated to hire and deploy international cargo inspectors, enhance databases to assess air cargo risks, and develop a global air cargo security strategy. The Senate also included increased funding for air cargo security, for hiring 50 additional air cargo inspectors to address the increased inspections and regulatory workload to oversee approximately 8,000 to 15,000 entities expected to participate in the

⁷⁷ Chris Strohm, "TSA Lacks Technology To Meet Air Cargo Screening Goal," *Congress Daily*, March 19, 2009.

⁷⁸ Ibid.

Certified Cargo Screening Program (CCSP) for meeting the 100% passenger airline cargo screening mandate.

P.L. 111-83 provides \$123 million for air cargo security. Of the funds for air cargo security above the requested level, \$4 million is designated for the deployment of skid-level and palletized cargo screening technologies and \$5 million is designated for testing, evaluating, and certifying existing screening technologies for use in screening fresh fruits and other perishable commodities. Additional amounts provided for air cargo security above the requested amount are intended for hiring additional inspectors and canine teams. A general provision in P.L. 111-83 (see Sec. 514) directs the TSA to work with air carriers and airports to incrementally increase the amount of cargo placed on passenger airliners that is screened, until the 100% screening mandate is met. The TSA must submit quarterly progress reports detailing air cargo inspection statistics and the incremental progress made toward achieving the 100% screening mandate, and must submit a report on how it will meet the mandate, detailing the elements of the screening system, within 180 days of enactment.

Operationally Deploying the Secure Flight Passenger Prescreening System

Past appropriations measures have included language prohibiting the TSA from implementing Secure Flight beyond operational testing of the system until the GAO reported to Congress that specific issues regarding privacy protection, data security and integrity, and redress procedures had been adequately addressed in the system's design and implementation. The GAO recently reported that the Secure Flight program has mostly achieved the mandated requirements set forth in these appropriations measures.⁷⁹ The TSA intends to carry out operational deployment of the Secure Flight program in phases with the goal of fully implementing it for all domestic flights by early 2010, and for all international flights by the end of 2010.⁸⁰ Congressional appropriators considered the adequacy of funding for maintaining this timetable, as well as options for implementing oversight mechanisms to ensure that the concerns expressed by Congress and the issues examined by the GAO during development of the system—such as privacy protections and data security—do not erode and are not compromised as the system is operationally deployed.

The Senate-passed bill includes language (Sec. 512) prohibiting the use of risk algorithms or non-federal databases as part of Secure Flight or any follow-on passenger prescreening system. H.Rept. 111-157 directs the GAO to continue reviewing Secure Flight to ensure that the conditions required for it to move beyond the testing phase, addressing issues such as data integrity, data security, and passenger redress, are generally achieved as implementation of the system moves forward. Similarly, S.Rept. 111-31 directs the TSA to report on the progress made in fully addressing GAO's recommendations as well as steps taken to develop life-cycle cost and schedule estimates for Secure Flight implementation. The Senate-passed bill also directs the TSA to address concerns over possible use of fraudulent passenger information when making airline reservations on the Secure Flight system.

P.L. 111-83 provides \$84 million for Secure Flight implementation. The Act does not include the general provision included in the Senate-passed bill to prohibit the use of funds to assess the security risk of passengers not on government terrorist watchlists or utilize non-federal databases, noting that these activities are already prohibited under the Secure Flight final rule promulgated by the TSA. Report language does, however, require the TSA to report within 90 days on its

⁷⁹ U.S. Government Accountability Office, *Aviation Security: TSA Has Completed Key Activities Associated with Implementing Secure Flight, but Additional Actions Are Needed to Mitigate Risks*, GAO-09-292, May 13, 2009.

⁸⁰ Transportation Security Administration, "TSA and Ad Council Raise Awareness of Secure Flight Program as part of National Public Education Campaign," Press Release, May 21, 2009.

progress in addressing GAO's recommendations regarding name matching, lifecycle costs, schedule estimates, and the impact of modifying prescreening rules on air carriers. The conference report (H.Rept. 111-298) also directs the GAO to continue its ongoing review of Secure Flight until all of these conditions are generally achieved, providing periodic updates to the appropriations committees on the TSA's progress in these regards. Additionally, Section 553 of the Act requires that the names of each detainee held at the Guantanamo Bay, Cuba, Naval Station be included on the No Fly List, unless the President certifies in writing that specified detainees do not pose a threat to the United States, its citizens, or its allies, in which case the names of those specific detainees may be omitted from the No Fly list.

United States Coast Guard⁸¹

The Coast Guard is the lead federal agency for the maritime component of homeland security. As such, it is the lead agency responsible for the security of U.S. ports, coastal and inland waterways, and territorial waters. The Coast Guard also performs missions that are not related to homeland security, such as maritime search and rescue, marine environmental protection, fisheries enforcement, and aids to navigation. The Coast Guard was transferred from the Department of Transportation to the DHS on March 1, 2003.

President's FY2010 Request

For FY2010, the President requested a total of \$9,729 million for the Coast Guard, which accounts for about 18% of DHS's requested budget. The President requested \$6,556 million for operating expenses (an increase of 4% over FY2009), \$1,384 million for acquisition, construction, and improvements (a decrease of 7% from FY2009), \$134 million for reserve training (an increase of 2% over FY2009), \$20 million for research, development, tests, and evaluation (an increase of 10% from FY2009), \$13 million for environmental compliance and restoration (a slight increase from FY2008), and zero funding for the bridge alteration program. **Table 12** provides more detail regarding the Coast Guard's Operating Expenses (OE) account and its Acquisition, Construction, and Improvements (ACI) account.

Table 12. Coast Guard Operating (OE) and Acquisition (ACI) Sub-account Detail
(budget authority in millions of dollars)

	FY2009 Enacted	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Operating Expenses	6,307	6,556	6,822	6,838	6,805
Military pay and allowances	3,062	3,245	3,271	3,256	3,255
Civilian pay and benefits	645	700	700	700	700
Training and recruiting	196	206	207	206	206
Operating funds and unit level maintenance	1,177	1,150	1,160	1,155	1,153
Centrally managed accounts	262	353	331	355	334
Port/vessel security and environmental response	24	—	—	—	—
Aviation mission hour gap	5	—	—	—	—

⁸¹ Prepared by John Frittelli, Specialist in Transportation Policy, Resources, Science and Industry Division.

	FY2009 Enacted	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Intermediate and depot level maintenance	824	903	912	925	916
DOD Transfer	112 ^a	—	—	—	—
Overseas Contingency Operation		^b	242 ^b	242 ^b	242
Acquisition, Construction, and Improvements	1,495	1,384	1,347	1,598	1,537
Vessels and Critical Infrastructure	113	103	103	123	121
Aircraft	—	—	—	—	—
Other Equipment	89	120	120	148	130
Integrated Deepwater System	1,034	1,051	1,015	1,195	1,154
Shore facilities and Aids to Navigation	68	10	10	27	27
Personnel and Related Support	93	100	100	105	105
Coast Guard HQ	98	—	—	—	—

Source: CRS Analysis of the *FY2010 DHS Congressional Budget Justifications*, the *FY2010 DHS Budget in Brief*, House-reported H.R. 2892 and H.Rept. 111-157, and Senate-reported S. 1298 and S.Rept. 111-31.

Note: Tables may not add due to rounding.

- Transfer from Navy's operations and maintenance account as per P.L. 110-252.
- The President's budget request, the House-passed bill, and the Senate-passed bill all include \$242 million for contingency operations funding for FY2010. The request treats this funding as a transfer, and therefore it is *not* included in the FY2010 amount. The House-passed and Senate-passed bills treat it as an appropriation, and therefore it is included in the total for the House-passed and Senate-passed columns.

House-passed H.R. 2892

The House version of the bill provided \$6,822 million in operating expenses, which is \$266 million more than the President requested, \$1,347 million for acquisitions, construction, and improvements, which is \$37 million less than the President requested, and \$10 million for alteration of bridges, which is \$10 million more than the President requested. For environmental compliance, reserve training, and research and development, the House bill agreed with the President's request.

Senate-passed H.R. 2892

The Senate version of the bill provided \$6,838 million for operating expenses, \$1,598 million for acquisition, construction, and improvements, \$30 million for research and development, and \$4 million for alteration of bridges, all of which are more than the President requested for these accounts, increasing the Coast Guard's budget above the President's request by about \$500 million in total.

P.L. 118-83

The enacted version provided \$6,805 million for operating expenses; \$1,537 million for acquisition, construction, and improvements; \$25 million for research and development; \$14

million for environmental compliance and restoration; \$134 million for reserve training; and \$1,361 million for retired pay. The enacted version provided \$411 million more than the Administration requested for the Coast Guard.

Issues for Congress

Increased duties in the maritime realm related to homeland security have added to the Coast Guard's obligations and increased the complexity of the issues it faces. Some Members of Congress have expressed concern with how the agency is operationally responding to these demands, including Coast Guard plans to replace many of its aging vessels and aircraft.

Deepwater

The Deepwater program is a 25-year acquisition program to replace or modernize 91 cutters, 124 small surface craft, and 247 aircraft at an estimated cost of over \$25 billion. The Coast Guard's management and execution of the program has been strongly criticized and several hearings were held on the program in 2007 and 2008. The GAO and DHS IG have been very active in reviewing Deepwater and in 2007 the Coast Guard decided to phase out an outside system integrator (a team led by Lockheed Martin and Northrup Grumman) to execute the program. For FY2010, the President requested \$591 million for Deepwater vessels, \$306 million for aircraft, and \$155 million for other related Deepwater assets and management. The House version provided \$1,015 million for Deepwater and the Senate version provided \$1,195 million. The enacted version of the bill provided \$1,154 million for Deepwater. Issues for Congress include the Coast Guard's management of the program, which is the largest and most complex acquisition effort in Coast Guard history, the overall cost of the program, and the program's time line for acquisition.⁸²

Security Mission

Some Members of Congress have expressed strong concerns that the Coast Guard does not have enough resources to carry out its homeland security mission. A GAO audit raised this concern with respect to the security of energy tankers,⁸³ and at a Senate hearing the GAO testified that Coast Guard resources were being challenged by a number of security requirements.⁸⁴ About 19% of the Coast Guard's FY2010 budget request is for its "port, waterways, and coastal security" (PWCS) mission.⁸⁵

For monitoring harbor traffic, the President's FY2010 request included \$2 million to continue operation of a nationwide system to detect, identify, track, and communicate with ships in U.S. harbors, called the Automatic Identification System (AIS), which has a range of about 50 nautical miles. This system is currently able to track ships, but not to communicate with them, in 55 ports and nine coastal waterways.⁸⁶ Tracking receivers are installed on land as well as on sea buoys, and elsewhere to extend the range of tracking. The FY2010 budget also requests \$4 million for operating expenses for Long Range Identification and Tracking (LRIT) of ships which has a

⁸² These issues are discussed in CRS Report RL33753, *Coast Guard Deepwater Acquisition Programs: Background, Oversight Issues, and Options for Congress*, by Ronald O'Rourke.

⁸³ GAO, *Maritime Security: Federal Efforts Needed to Address Challenges in Preventing and Responding to Terrorist Attacks on Energy Commodity Tankers*, GAO-08-141, December 2007.

⁸⁴ GAO, *Coast Guard: Deepwater Program Management Initiatives and Key Homeland Security Missions*, March 5, 2008, GAO-08-531T, see specifically pp. 12-16.

⁸⁵ DHS FY2010 Budget in Brief, p. 88.

⁸⁶ Coast Guard FY2010 Budget Justification, p. CG-OE-22.

range of more than 1,000 nautical miles from the coast.⁸⁷ The GAO released an audit of the Coast Guard's vessel tracking systems in March 2009 and found that AIS and LRIT systems may be duplicative of a classified means of tracking vessels.⁸⁸

The Coast Guard has set up interagency operations centers (IOCs) at some ports to enhance security. IOCs are fusion centers to be located in each Coast Guard sector that are intended to facilitate intelligence sharing and coordinated responses among federal and state or local law enforcement to harbor security activity, such as boardings of high-risk vessels. They have been established in a few major ports and are generally co-located with Vessel Traffic Services (VTSs) which were set up for safety purposes and are staffed by Coast Guard "watchstanders" who monitor harbor ship traffic and provide navigation information to ship captains. In FY2009, the Senate Appropriations Committee's report requested quarterly briefings by the Coast Guard on the status and development of (IOCs). For FY2010, the President's budget did not specifically mention operational centers except for a request of \$1 million to continue Project Seahawk at the Port of Charleston. Seahawk is an interagency operations center that is different from the others in that it was originally established by the Department of Justice rather than the Coast Guard. The House and Senate committee reports concurred with the President's request regarding Project Seahawk,⁸⁹ and the Senate committee report recommended an additional \$28 million for IOCs. The conference agreement provided \$10 million for IOCs and requested a report from the Coast Guard on its capability to secure liquefied natural gas (LNG) tankers and facilities.

An unresolved issue is the usefulness of tracking smaller vessels, such as recreational boats, to counter the threat posed by suicide bombers or smugglers. There are too many smaller boats for the Coast Guard to track and recreational boaters oppose tracking because of cost and privacy concerns. Based on a recent DHS strategy report, it appears the Coast Guard has no immediate plans to require smaller vessels be outfitted with AIS transponders but will continue to pursue methods to identify small craft.⁹⁰

Non-Homeland Security Missions

Some Members of Congress have expressed concern that with the Coast Guard's emphasis on its maritime security mission, the agency may have difficulty sustaining its traditional, non-homeland security missions such as fisheries enforcement or marine environmental protection.⁹¹

Marine Safety

A congressional hearing was held on August 2, 2007, to examine the performance of the Coast Guard's Marine Safety Program.⁹² Witnesses from the maritime industry complained about Coast Guard delays in documenting mariners and vessels and a lack of technical expertise and experience by Coast Guard marine inspectors. In response to these criticisms, the Commandant

⁸⁷ Coast Guard FY2010 Budget Justification, p. CG-OE-18.

⁸⁸ GAO, Maritime Security: Vessel Tracking Systems Provide Key Information, but the Need for Duplicate Data Should Be Reviewed, GAO-09-337, March 2009.

⁸⁹ H.Rept. 111-157, p. 77, S.Rept. 111-31, p.71.

⁹⁰ DHS, Small Vessel Security Strategy, April 2008.

⁹¹ See DHS OIG, Annual Review of the U.S. Coast Guard's Mission Performance (FY2007), OIG-09-13, December 2008 for the latest breakdown of resources by mission area. For information on Coast Guard environmental protection issues, see CRS Report RS22145, *Environmental Activities of the U.S. Coast Guard*, by Jonathan L. Ramseur.

⁹² House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, "Challenges Facing the Coast Guard's Marine Safety Program," August 2, 2007.

announced a plan to increase civilian positions in the marine safety program and strengthen their career paths to foster professional continuity in this area.⁹³ The FY2009 budget request noted that “the Coast Guard is encountering serious stakeholder concern about our capacity to conduct marine inspections, investigations, and rulemaking.”⁹⁴ The FY2009 budget provided an additional \$20 million in operating expenses in order to: add 276 marine inspector positions; respond to an increase in LNG vessel calls; conduct examinations of 5,200 towing vessels mandated in the FY2004 Coast Guard Authorization Act; review non-tank vessel oil spill response plans; and conduct oversight of ballast water management.⁹⁵ The FY2009 budget also provided \$2.6 million to fund 25 rulemaking projects involving safety, security, and environmental protection.

For FY2010, the President requested \$7.5 million for 74 additional marine safety personnel, which was agreed to in the House and Senate committee reports.⁹⁶

Rescue-21

During the FY2007 appropriations process, Congress expressed strong concern with the Coast Guard’s management of the Rescue 21 program, the Coast Guard’s new coastal zone communications network that is key to its search and rescue mission and which replaces its National Distress and Response System. A 2006 GAO audit of the program found a tripling of project cost from the original estimate and likely further delays in project completion, which was already five years behind schedule.⁹⁷ The GAO’s FY2008 Coast Guard budget review noted that while Rescue-21 was originally intended to limit gaps to 2% of coverage area, that target has now expanded to a less than 10% coverage gap.⁹⁸ In the FY2008 Appropriations Act (P.L. 110-161), Congress expressed concern for the number of outages that had been recorded with the system, and requested that the Coast Guard provide quarterly briefings on its plans to address the outages. In FY2009, Congress provided \$88 million for Rescue 21 for further deployment of the system’s infrastructure at seven Coast Guard sectors⁹⁹ and additional watchstanders at 15 sectors receiving the most rescue traffic.¹⁰⁰ The Senate committee report stated that the overall acquisition cost is estimated to be \$1,066 million, an increase of \$366 million, and the completion date had been extended six years to 2017.¹⁰¹

For FY2010, the President requested \$117 million for California and New England sectors to receive Rescue-21 capability, and continued development in the Great Lakes region, Hawaii, Guam, and Puerto Rico. The House and Senate agreed with this request.

⁹³ U.S. Coast Guard, “Enhancing the Coast Guard’s Marine Safety Program,” September 25, 2007.

⁹⁴ Coast Guard FY2009 Budget Justification, p. CG-SC-5.

⁹⁵ Coast Guard FY2009 Budget Justification, p. CG-OE-52 and DHS FY2009 Budget in Brief, p. 60-61.

⁹⁶ H.Rept. 111-157, p. 76, S.Rept. 111-31, p. 71.

⁹⁷ GAO, United States Coast Guard: Improvements Needed in Management and Oversight of Rescue System Acquisition, GAO-06-623, May 2006.

⁹⁸ GAO, Coast Guard: Observations on the Fiscal Year 2008 Budget, Performance, Reorganization, and Related Challenges, April 18, 2007, GAO-07-489T, p. 3.

⁹⁹ Coast Guard FY2009 Budget Justification, p. CG-AC&I-128.

¹⁰⁰ Coast Guard FY2009 Budget Justification, p. CG-OE-33 and 34.

¹⁰¹ S.Rept. 110-396, p. 88.

LORAN-C

The LORAN-C (Long-Range Aids to Navigation) system is an older navigation system that can help vessels or aircraft determine their location using radio signals from 24 tower stations in the United States.¹⁰² The Coast Guard has argued that this system is no longer needed in light of GPS (Global Positioning System) technology which is more precise than LORAN, and in recent budget submissions requested that the LORAN-C system be terminated. In FY2007, Congress funded continuation of the LORAN-C system and required the Coast Guard, among other things, to first notify the public before terminating the system. On January 8, 2007, DHS and the Department of Transportation issued a Federal Register notice seeking public comment on whether to decommission LORAN, maintain it, or upgrade it.¹⁰³ A review of some of the public comments filed indicate that lobstermen may use LORAN-C to locate their traps when their buoys are lost, fishing trawlers use it to re-locate certain fishing areas and to avoid objects that would interfere with their nets, charter boat and some recreational boaters still rely on it, and harbor pilots and other commercial shipping interests believe a land-based system like LORAN is needed as a back-up to satellite-based navigation, even though they no longer use LORAN.¹⁰⁴ Small aircraft operators also support maintaining LORAN as a back-up system but the commercial airlines and manufacturers (Boeing and Airbus) do not support maintaining the system. Proponents of maintaining the land-based LORAN system argue that GPS signals are weak and can sometimes be disrupted by bad weather or mountains and are vulnerable to solar storms or intentional jamming.¹⁰⁵

For FY2008, Congress denied the Administration's request to terminate LORAN-C and noted that an Administration policy decision on the future of LORAN-C was expected to be completed by March 1, 2008.¹⁰⁶ On February 7, 2008, the DHS announced that an enhanced LORAN system (eLoran) will be developed as a backup system to GPS.¹⁰⁷ The Bush Administration's FY2009 budget requested that the administration of the eLoran system be transferred to the National Preparedness and Programs Directorate (NPPD) of DHS (a transfer equating to \$35 million) because the NPPD's mission was more related to critical infrastructure redundancy than was the Coast Guard's.¹⁰⁸ In FY2009, Congress denied the Administration's request to transfer these funds to NPPD.

For FY2010, the Obama Administration requested that LORAN-C be terminated, arguing that it is no longer needed in light of GPS and states that this will save \$36 million in FY2010, \$190 million over five years, and allow Coast Guard military personnel to be reassigned to other missions.¹⁰⁹ The budget justification for NPPD does not mention LORAN nor is funding for it mentioned under other agencies in the Budget Appendix. The House Appropriations Committee

¹⁰² It dates back to World War II and a previous version known as LORAN-A.

¹⁰³ Federal Register, vol. 72, no. 4, January 8, 2007, pp. 796-797.

¹⁰⁴ Comments can be viewed at <http://www.regulations.gov> and searching under docket numbers USCG-2006-24685 and USCG-2007-28460.

¹⁰⁵ For a GAO review of the U.S. Air Force's planned improvements to GPS, see report # GAO-09-325, April 2009. See also, U.S. DOT, Volpe Center, Vulnerability Assessment of the Transportation Infrastructure Relying on the Global Positioning System, September 2001.

¹⁰⁶ For further information on LORAN-C and eLoran, see these two government reports: http://www.navcen.uscg.gov/Loran/geninfo/LORAN_PEIS_2008.pdf and http://www.navcen.uscg.gov/pubs/frp2008/2008_Federal_Radionavigation_Plan.pdf.

¹⁰⁷ States News Service, Statement of DHS Press Secretary Laura Keehner, February 7, 2008.

¹⁰⁸ Coast Guard FY2009 Budget Justification, p. CG-OE-18 and 19.

¹⁰⁹ Coast Guard Budget Justification, p. CG-OE-33.

Report provides \$36 million for maintaining LORAN-C and directs the Coast Guard to submit a plan for upgrading to eLoran.¹¹⁰ The Senate also supported continued funding for LORAN-C and voted against an amendment (S.Amdt. 1406) to terminate funding by a vote of 61 to 37. The Senate Appropriations Committee Report stated that funding will terminate January 4, 2010, if the Coast Guard certifies that terminating the signal will not adversely affect maritime safety and is not needed as a GPS backup.¹¹¹ P.L. 111-83 provided \$18 million for LORAN and adopted the Senate language regarding possibly terminating the program in January 2010.

Bridge Alteration Program

The bridge alteration program is a program to alter or remove road or railroad bridges that are obstructing navigation. The President requested no new funding for this program. In FY2009, Congress appropriated \$16 million and in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) included \$142 million in emergency supplemental funding for this program. The House version provided \$10 million while the Senate version provided \$4 million and directed that these funds be spent on the Fort Madison Bridge in Iowa. The enacted version adopted the Senate language.

Arctic Activity

With the melting of Arctic sea ice, it is predicted that a Trans-Arctic commercial shipping lane could soon develop in addition to other increased shipping activity in order to extract natural resources from the region. Cruise ship activity has also increased in the Arctic and there is an immediate concern about the inability of rescuers to reach a passenger vessel in time if it were in distress. The Coast Guard is currently testing how its vessels, aircraft, and personnel operate in the Arctic. Three polar icebreaker ships are operated by the Coast Guard (one of them, the *Polar Star*, is in caretaker status) but funded from the National Science Foundation's (NSF) budget. In light of additional polar activities that may extend beyond scientific research, in FY2009, Congress directed the Coast Guard to negotiate with the NSF to return the budget of the polar icebreakers to the Coast Guard and provided \$30 million to reactivate the *Polar Star* for 7 to 10 years of service life.¹¹² The President's FY2010 budget does not request any funds specifically for icebreakers.¹¹³ The House and Senate committee reports directed the Coast Guard to continue negotiating with NSF to return the budget for icebreaking under the Coast Guard and the Senate report recommended an additional \$33 million for the *Polar Star*.¹¹⁴ P.L. 111-83 directed the Coast Guard to request budget authority for polar icebreaking operation and maintenance in FY2011, requested a report on the agency's high latitude capabilities as directed in the House report, and provided \$33 million for the *Polar Star*.

¹¹⁰ H.Rept. 111-157, p. 78.

¹¹¹ S.Rept. 111-31, p. 72.

¹¹² Congressional Record, September 24, 2008, p. H9800.200

¹¹³ For further discussion of the U.S. icebreaker fleet, see CRS Report RL34391, *Coast Guard Polar Icebreaker Modernization: Background, Issues, and Options for Congress*, by Ronald O'Rourke.

¹¹⁴ H.Rept. 111-157, p. 79, S.Rept. 111-31, pp. 73 and 78.

U.S. Secret Service¹¹⁵

The U.S. Secret Service (USSS)¹¹⁶ has two broad missions, criminal investigations and protection.¹¹⁷ Criminal investigation activities encompass financial crimes, identity theft, counterfeiting, computer fraud, and computer-based attacks on the nation's financial, banking, and telecommunications infrastructure, among other areas. The protection mission is the most prominent, covering the President, Vice President, their families, and candidates for those offices, along with the White House and Vice President's residence, through the Service's Uniformed Division. Protective duties also extend to foreign missions in the District of Columbia and to designated individuals, such as the DHS Secretary and visiting foreign dignitaries. Aside from these specific mandated assignments, USSS is responsible for security activities at National Special Security Events (NSSE)¹¹⁸, which include the major party quadrennial national conventions as well as international conferences and events held in the United States. The NSSE designation by the President gives the USSS authority to organize and coordinate security arrangements involving various law enforcement units from other federal agencies and state and local governments, as well as from the National Guard.

Table 13. U.S. Secret Service Appropriations

(budget authority in millions of dollars)

Programs and Activities	FY2009 Enacted	FY2010 Budget Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Protection of persons and facilities	806 ^a	756	756	760	756
Protective intelligence activities	60	68	68	68	68
National Special Security Events	1	1	1	1	1
Candidate nominee protection	41	—	—	—	—
White House mail screening	34	25	22	22	22
Management and administration	182	221	200	221	221
Rowley Training Center	53	54	54	54	54
Domestic field operations	242	261	261	261	261
International field operations	30	31	31	31	31
Electronic crimes program	52	57	57	57	57
Forensic support to the National Center for Missing and Exploited Children	8	8	8	8	8

¹¹⁵ Prepared by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, Government and Finance Division.

¹¹⁶ For more information, see CRS Report RL34603, *The U.S. Secret Service: An Examination and Analysis of Its Evolving Missions*, by Shawn Reese.

¹¹⁷ U.S. Department of Homeland Security, *U.S. Secret Service: Salaries and Expenses*, Washington, DC, May 2009, pp. USSS-1.

¹¹⁸ For more information, see CRS Report RS22754, *National Special Security Events*, by Shawn Reese.

Programs and Activities	FY2009 Enacted	FY2010 Budget Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Acquisition, construction, and improvements	4	4	4	4	4
Uniformed Division modernization	—	4	—	—	—
Total	1,513	1,490	1,462	1,487	1,483

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, Senate-passed H.R. 2892 and S.Rept. 111-31, and P.L. 111-83.

Notes:

- a. This amount includes the \$100 million appropriated for protection of persons and facilities in P.L. 111-8, the FY2009 omnibus.

President's FY2010 Request

For FY2010, the Administration requested an appropriation of \$1,490 million for protection and criminal investigation missions of USSS.¹¹⁹ The Administration's request reflected a decrease of \$23 million from the FY2009 appropriation total of \$1,513 million for the USSS.

House-passed H.R. 2892

The House-passed version of H.R. 2892 recommended \$1,461 million for protection and investigation missions, and acquisitions. The House-passed version was a decrease of \$52 million from the FY2009 appropriation total of \$1,513 for the USSS. The proposed appropriation language prohibited the USSS from protecting any federal agency head, other than the DHS Secretary, without reimbursement.

Senate-passed H.R. 2892

The Senate-passed H.R. 2892 recommended \$1,487 million for protection and investigation missions, and acquisitions. The Senate-passed version was a decrease of \$26 million from the FY2009 appropriation total of \$1,513 for the USSS. The proposed appropriation language, like the House-passed version of H.R. 2892, prohibited the USSS from protecting any federal agency head, other than the DHS Secretary, without reimbursement. Additionally, the Senate-passed version of H.R. 2892 provided funding for the USSS to establish an international field office in Tallinn, Estonia to combat electronic crimes.

P.L. 111-83

The conferees primarily agreed to the House recommendation, as described above, with the exception of providing \$221 million for management and administration costs instead of the House recommendation of \$200 million. Congress appropriated a total of \$1,483 million for USSS in FY2010; this appropriation was a decrease of \$30 million from the FY2009 total of \$1,513 million. Additionally, Congress prohibited the USSS from protecting any federal agency head, other than the DHS Secretary, without reimbursement, and the conference agreement included funding for operations in Estonia to combat emerging electronic crime threats in the

¹¹⁹ U.S. Department of Homeland Security, U.S. Secret Service: *Fiscal Year 2010 Overview Congressional Justification*, Washington, DC, May 2009, p. i.

Baltic States. USSS, however, cannot open any other international or domestic field offices without notifying, in advance, the House and Senate Appropriations Committees.

The conferees also expressed concern over the delayed notification Congress received on USSS campaign protection cost overruns in FY2009. Additionally, the conferees noted that USSS has indicated that its protective responsibilities in FY2010 will include more protectees than budgeted, which may result in the FY2010 protective mission funding being inadequate. Because of this, the conferees directed the DHS Chief Financial Officer and the USSS Assistant Director for Administration to brief the House and Senate Appropriations Committees not later than 30 days after the enactment of P.L. 111-83 on the process the Service will implement in FY2010 to ensure no protection mission funding shortfall occurs.

USSS Issues for Congress

There are two potential issues Congress might wish to address concerning the FY2010 appropriations for USSS. The two issues include funding for the Service's protection mission, and NSSE funding.

Protection Mission Funding

USSS's protection mission, as opposed to its investigative mission, employs the majority of the Service's agents and receives a larger share of the agency's resources. Additionally, the majority of congressional action concerning USSS has been related to its protection mission, including the FY2010 appropriations, and the accompanying conference report, for USSS. The priority given to protection reflects the costs associated with an increase in protecting individuals, events, and facilities, which the conferees noted in H.Rept. 111-298, the conference report accompanying P.L. 111-83. While Congress has maintained USSS's role in investigating financial crimes, such as providing funding for a new international field office in Estonia to combat electronic crimes, congressional action primarily has addressed, and continues to address, the Service's protection mission. An example of this is the 110th Congress's enactment of P.L. 110-326, the Former Vice President Protection Act of 2008, which requires the Service to protect former Vice Presidents, their spouses, and minor children for a period of up to six months after leaving office. Congress has, however, moved to reduce the Service's protection mission by specifically stating, in the FY2010 DHS appropriations, that the USSS could not use any funds to protect any federal department head, except the DHS Secretary, unless the Service is reimbursed.¹²⁰

One could argue that potential terrorist attacks and possible threats to the President have resulted in an increase in the need for the Service's protection activities. Additionally, USSS has indicated that it has increased the number of protectees and has not budgeted for this increase in its protection mission in FY2010. Advocates for expansion of the investigation mission, however, may contend that protection is enhanced through better threat investigation efforts.

National Special Security Event Funding

Federal funding for NSSE costs incurred by state, and local entities is one issue Congress may wish to address. In FY2010, Congress appropriated \$1 million for NSSE costs within USSS.¹²¹ This appropriation may be used to fund USSS development and implementation of security operations at NSSEs; however, it cannot be used to reimburse state and local law enforcement NSSE overtime costs. In the past, Congress has appropriated funding for state and local costs

¹²⁰ P.L. 111-83.

¹²¹ Ibid.

incurred for specific NSSEs, such as the 2008 presidential nominating conventions, which totaled \$100 million through the Department of Justice's (DOJ) Office of Grant Programs.

Another issue that Congress may wish to address concerns whether the \$1 million appropriated in FY2010 is sufficient to cover multiple or unexpected NSSE costs. (The USSS has never requested supplemental funding to support NSSE operations.) In addition to the NSSE funding through USSS and DOJ, state and local jurisdictions can use DHS grants, such as the State Homeland Security Grant Program (SHSGP) and the Urban Area Security Initiative (UASI), for NSSE-related security activities. However, the grant approval process for these programs is not flexible; states and localities would need to include SHSGP and UASI funding for NSSE security in their grant applications. For unexpected NSSEs, states and localities are unable to plan ahead and therefore cannot use SHSGP or UASI funds to cover these unexpected security costs. DHS does authorize states and localities to reprogram SHSGP and UASI funding with the DHS Secretary's approval; however, that may result in states and localities not funding other planned homeland security activities.

A related issue that Congress may wish to consider could include whether more coordination of NSSE funding is needed at the federal level. Currently USSS, DOJ, and the Federal Emergency Management Agency's Grant Programs Directorate each have separate funding streams that can be used to fund different components of NSSEs. However, there is no overarching coordinating mechanism in place to oversee this funding.

Title III: Preparedness and Response

Title III includes appropriations for the Federal Emergency Management Agency (FEMA), the National Protection and Programs Directorate (NPPD), and the Office of Health Affairs (OHA). Congress expanded FEMA's authorities and responsibilities in the Post-Katrina Emergency Reform Act (P.L. 109-295) and explicitly kept certain DHS functions out of the "new FEMA."¹²² In response to these statutory exclusions, DHS officials created the NPPD to house functions not transferred to FEMA, and the OHA was established for the Office of the Chief Medical Officer. **Table 14** provides account-level appropriations detail for Title III.

¹²² P.L. 109-295, 120 Stat. 1400.

Table 14. Title III: Preparedness and Response

(budget authority in millions of dollars)

Operational Component	FY2009 Appropriation				FY2010 Appropriation			
	FY2009 Enacted	FY2009 Supp.	FY2009 Resc.	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
National Protection and Programs Directorate								
Management and Administration	51			51	45	45	45	45
Infrastructure Protection and Information Security	807			807	918	883	901	899
US-VISIT	300			300	356	352	378	374
Federal Protective Service (FPS)					640		1,115	1,115
Gross Total	1,158			1,158	1,959	1,280	2,439	2,433
Offsetting collections					-640		-1,115	-1,115
Net total	1,158			1,158	1,319	1,280	1,324	1,318
Office of Health Affairs	157			157	138	128	135	139
Federal Emergency Management Agency								
Management and Administration	837 ^a			837 ^a	852	845	860 ^e	798 ^f
Grant Programs Directorate	3,471 ^b	400		3,821 ^b	3,867 ^c	3,976 ^c	4,222 ^c	4,165
Firefighter Assistance Grants	775	210		985	[590] ^g	[800] ^g	[810] ^g	[810] ^g
U.S. Fire Administration	45			45	46	46	46	46
Disaster relief	1,400 ^d		100	1,300 ^d	2,000 ^e	2,000 ^h	1,457 ^h	1,600 ⁱ
Disaster readiness and support activities	—							
Flood map modernization fund	220			220	220	220	220	220
National flood insurance fund (NFIF) ^j	—							
National flood mitigation ^k	—							
Pre-disaster mitigation fund	90			90	150	100	120	100
Emergency food and shelter	200	100		300	100	200	175	200

Operational Component	FY2009 Appropriation				FY2010 Appropriation			FY2010 Enacted
	FY2009 Enacted	FY2009 Supp.	FY2009 Resc.	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	
Disaster assistance direct loan account	—							
Radiological Emergency Preparedness ^l								
Net total	7,038^m	610		7,648^m	7,235	7,386	7,100	7,128
Net budget authority subtotal: Title III	8,353^m	610		8,963^m	8,692	8,794	8,558	8,585
Offsetting collections					640		1,115	1,115
Gross budget authority Title III	8,353^m	610		8,963^m	9,332	8,794	9,673	9,700

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Notes: Tables may not add due to rounding. Amounts in parentheses are non-adds.

- a. Does not include \$94 million in transfers from the Department of Defense.
- b. Includes State and Local Grants, Emergency Performance Management Grants (EMPG), and \$50 million in Real ID grants. Also includes \$100 million appropriation from P.L. 111-32, section 603(b).
- c. Includes State and Local Grants, Emergency Performance Management Grants (EMPG), Assistance to Firefighters grants, and \$50 million in Real ID grants
- d. Does not include transfers from the Disaster Relief Fund (DRF) of \$106 million to FEMA's Management and Administration account, and of \$16 million to the DHS Office of Inspector General in Title I. The amount includes a rescission of \$100 million from P.L. 111-32, section 603(a).
- e. Does not include transfers from the DRF of \$50 million to FEMA's Management and Administration account.
- f. Does not include transfers from the DRF of \$106 million to FEMA's Management and Administration account.
- g. Amounts for Firefighter Assistance Grants are included under the Grant Programs Directorate. The Administration's request included \$590 million for Firefighter Assistance Grants, while the House-passed version of H.R. 2892 included \$800 million for this activity, and the Senate-passed version of H.R. 2892 included \$810 million (the additional \$10 million being transferred: \$5 million from Aviation Security and \$5 million from Trucking Industry Security per Sec. 572).
- h. Does not include transfers from the DRF of \$90 million to FEMA's Management and Administration account nor does it include a transfer from the DRF of \$16 million to the DHS OIG in Title I..
- i. Does not include transfers from the DRF of \$106 million to FEMA's Management and Administration account, nor does it include a transfer from the DRF of \$16 million to the DHS OIG in Title I.
- j. Funds derived from premium payments or transfers from the U.S. Treasury, not appropriations.
- k. Funds derived from National Flood Insurance Fund (NFIF) transfers, not appropriations.
- l. Radiological Emergency Preparedness funds are provided through reimbursements and are not actually appropriated funds.
- m. Includes \$50 million for Real ID Grants.

Federal Emergency Management Agency

The primary mission of the Federal Emergency Management Agency (FEMA) “is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.”¹²³

President’s FY2010 Request¹²⁴

For FY2010, the President’s budget submission requested an appropriation of \$7,235 million for FEMA, an increase of 3% over the FY2009 total of \$7,038 million. The President requested \$2,000 million for the Disaster Relief Fund (DRF) (an increase of 43% over the FY2009 total of \$1,400 million). The President’s budget submission also requested a total of \$3,867 million for state and local programs in FY2010, \$909 million less than appropriated in FY2009, which was \$4,776 million (representing a decrease of 19%).

In support of FEMA’s mission, some of the main proposals addressed in the President’s FY2010 budget submission include updating technology systems and improving processes related to disaster assistance programs, modifying evacuation procedures through the use of additional state and local plans and evacuee tracking systems, and enhancing federal operational capabilities for responding to emergencies and major disasters. FEMA has also announced it will be making efforts to enhance the capabilities of Incident Management Assistance Teams (IMAT), and implement standardized hiring, training and credentialing of disaster responders. The Administration also seeks to provide additional funding for logistics planning, operations and management.

Additionally, FEMA plans to expand the agency’s National Continuity Program (NCP), improve the National Preparedness Directorate’s (NPD) training, exercise, technological hazards and community preparedness programs to implement the National Preparedness System,¹²⁵ and transition the Flood Map Modernization program to a system that will review and update flood maps every five years. The President’s budget submission also included a request for increased funding for its Gap Analysis Program (GAP) to examine the strengths and weaknesses of each state’s emergency and evacuation plans. Traditionally, the GAP program focused primarily on hurricane-prone regions and rural and suburban areas, rather than individual states.¹²⁶

House-Passed H.R. 2892

The House recommended a total of \$7,386 million for FEMA, an increase of 2% (\$151 million) over the President’s budget submission. The House recommended roughly \$845 million for FEMA’s Management and Administration account, which was \$7 million less than the Administration’s request (\$852 million). The House also recommended that \$32 million from this account be available for the Urban Search and Rescue Response System (\$4 million more than

¹²³ Federal Emergency Management Agency, *About FEMA: FEMA Mission*, Washington DC, November 2008, <http://www.fema.gov/about/index.shtm>.

¹²⁴ Prepared by Bruce R. Lindsay and Francis X. McCarthy, Analysts in Emergency Management Policy, Government and Finance Division.

¹²⁵ Assessments on the program’s progress will be published in a National Preparedness Report (NPR).

¹²⁶ Department of Homeland Security: Federal Emergency Management Agency, *Fiscal Year 2010: Strategic Context*, Congressional Justification, Washington DC, April 2009, pp. 2-11.

the Administration request), and another \$7 million be available for the Office of National Capital Region Coordination (the same amount requested by the Administration).

The House recommended \$2,000 million for the DRF. However, H.R. 2892 contained several provisions associated with the recommendation. One such provision required FEMA to submit an expenditure plan to Congress detailing the use of funds for disaster readiness and support 60 days after enactment of the bill. The bill also contained some transfers from the DRF including a mandatory transfer of \$16 million to the DHS Office of the Inspector General, and provided FEMA the discretion to transfer up to \$90 million to FEMA's Management and Administration account.¹²⁷

Senate-Passed H.R. 2892

The Senate recommended a total of \$7,100 million for FEMA, \$135 million less than the President's budget submission. The Senate recommended roughly \$860 million for FEMA's Management and Administration account, an increase of 1% over the Administration's request. The Senate recommendation for the DRF was \$1,457 million. Compared to the Administration request, the DRF figure represents a 37% decrease (\$543 million). As in the House recommendations, the Senate bill carried a number of provisions and transfers related to the DRF. The Senate version required that FEMA submit an expenditure plan to Congress detailing the use of funds for disaster readiness and support 60 days after the enactment of the bill. The Senate further recommended a mandatory transfer of \$16 million to the DHS Office of the Inspector General and provided FEMA the discretion to transfer up to \$50 million from the DRF to FEMA's Management and Administration account. There were however, some Senate-approved provisions attached to the DRF not included in the House bill, including a requirement that the Administrator of FEMA submit a report detailing a plan for the acquisition of alternative temporary housing units. The bill also mandates that the Administrator develop procedures for expanding the repair of existing multi-family rental housing units.

The Senate recommended \$220 million for flood map modernization, the same amount requested by the Administration and the House.

P.L. 111-83

P.L. 111-83 provided \$7,976 million for FEMA, representing a 10% increase over the President's request, 8% more than the House request, and 12% above the amount recommended by the Senate.

Disaster Relief Fund

P.L. 111-83 provided \$1,600 million for the DRF, a decrease of 12% below the amount proposed by both the President and the House, and an increase of 10% above the amount recommended by the Senate. The Administration might perceive the appropriated amount in P.L. 111-83 as a set-back because increasing the amount provided to the DRF was one of the President's goals. The President claimed that previous FEMA budgets did not account for large disasters. This permitted past administrations to project deficits that were lower than were likely to occur.¹²⁸

¹²⁷ The legislation states that \$90,080,000 *may be transferred to FEMA's Management and Administration account for management and administration functions.*

¹²⁸ Office of Management and Budget, *A New Era of Responsibility: Renewing America's Promise*, Washington DC, February 26, 2009, p. 36.

The amount funded to the DRF also contained a number of reporting requirements, including an expenditure plan to the Committees on Appropriations of both chambers that details the use of the funds for disaster readiness and support within 60 days of enactment. The law also required a quarterly report detailing obligations against FEMA's expenditure plan and a justification for any changes in spending. Moreover, P.L. 111-83 had a number of provisions that will likely affect the funding level of the DRF. These included a transfer of \$16 million from the DRF to the Department of Homeland Security Office of Inspector General for audits and investigations related to disasters and the transfer of \$105 million to FEMA's Management and Administration Account.¹²⁹ The combined amount in transfers totaled \$121 million.

State and Local Programs¹³⁰

FEMA is responsible for administering grant programs that help states, localities, and critical infrastructure, both private and public, meet their homeland security needs.¹³¹ These programs are used primarily by first responders, which include firefighters, emergency medical personnel, emergency managers, and law enforcement officers. Specifically, the appropriations for these programs fund grants, training, exercises, and other support activities that enable states, territories, and tribal and joint jurisdictions to prepare for acts of terrorism, emergencies, and major disasters. The programs are administered by two different organizations within FEMA, the Grants Programs Directorate (GPD) and the National Preparedness Directorate (NPD).

GPD programs include:

- State Homeland Security Grant Program (SHSGP),
- Firefighter Assistance Grants Program (FIRE),
- Driver's License Security Grants Program (DLSGP, formerly known as REAL ID),
- Citizen Corps Grant Program (CCP),
- Interoperable Emergency Communications Grant Program (IECGP),
- Regional Catastrophic Preparedness Grant Program (RCPGP),
- Medical Surge Grant Program (MSGP, formerly known as the Metropolitan Medical Response System),
- Emergency Management Performance Grants (EMPG),
- Urban Area Security Initiative (UASI), and
- Transportation Infrastructure Protection (including port, rail/transit, and Buffer Zone Protection security programs).¹³²

¹²⁹ The transfer contains the proviso that FEMA shall not be allowed to make the transfer unless a number of requirements are met, including an expenditure plan to the Committees on Appropriations of the Senate and the House of Representatives, and the continuation of the "Disaster Relief Report" as specified in P.L. 110-161.

¹³⁰ Prepared by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, Government and Finance Division.

¹³¹ For more information on these grant programs and an analysis of some policy issues, see CRS Report R40246, *Department of Homeland Security Assistance to States and Localities: A Summary and Issues for the 111th Congress*, by Shawn Reese.

¹³² U.S. Department of Homeland Security, *Federal Emergency Management Agency, State and Local Programs: Fiscal Year 2010 Congressional Budget Submission*, Washington, DC, May 2009, pp. FEMA-SLP-1 - FEMA-SLP-2.

NPD is responsible for administering the Training, Measurement, and Exercise Programs, which include exercises, training, technical assistance and evaluations. In FY2010 this account funds the National Exercise Program (NEP), State and Local Training Programs, Technical Assistance (TA) Programs, and Evaluations and National Assessments.¹³³

The President's budget proposed \$908 million less for these programs than was appropriated in FY2009 (\$4,776 million); however, some programs would have received increased funding in FY2010. The House-passed version of H.R. 2892 proposed \$3,959 million and the Senate-passed version proposed \$4,222 million for these programs in FY2010. Congress appropriated approximately \$4,200 million for FEMA programs for state and locality homeland security in FY2010, and established limits on the amount FEMA and grantees can use funding for management and administration costs.

The Administration categorizes of all these programs into the following: Homeland Security Prevention and Protection Programs; Homeland Security Response and Recovery Programs; and Other National, State and Local Programs/Training, Measurement, and Exercise Program. See **Table 15** below, for specific amounts requested and appropriated in FY2010.

Table 15. FY2009 Enacted and FY2010 Requested Budget Authority for State and Local Programs

(All amounts in millions)

Programs	FY2009 Enacted	FY2010 Budget Request	FY2010 House-Reported	FY2010 Senate-Reported	FY2010 Enacted
Homeland Security Prevention and Protection Programs					
Urban Area Security Initiative	838	887	887	887	887 ^a
State Homeland Security Grant Program	950 ^b	950 ^b	950 ^b	950	950 ^b
Driver's License Security Program (REAL ID)	50	50	50	50	50
Buffer Zone Protection Program	50	50	50	50	50
Transportation Security Grant Program	1,120 ^c	500 ^d	512	706	612 ^e
Homeland Security Response and Recovery Programs					
Assistance to Firefighters	985 ^f	590 ^g	800	800	810
Emergency Management Performance Grants	315	315	330	350	340
Metropolitan Medical Response System	41	40	40	40	41
Citizen Corps Programs	15	15	15	15	13
Regional Catastrophic Preparedness	35	35	0	35	35
Interoperable Emergency Communications Grants	50	50	50	50	50

¹³³ Ibid., p. FEMA-SLP-3.

Programs	FY2009 Enacted	FY2010 Budget Request	FY2010 House- Reported	FY2010 Senate- Reported	FY2010 Enacted
Mississippi Interoperable Communications	20	0	0	0	0
Emergency Operations Centers	35	0	40	20	60
Other National, State and Local Grant Programs/Training, Measurement and Exercise Program					
Commercial Equipment Direct Assistance Program	8	0	0	0	0
Continuing Training Grants	31	23	31	27	29
National Domestic Preparedness Consortium	102	52	92	102	102
Cybercrime Counterterrorism Training	2	0	0	2	2
Center for Domestic Preparedness/Noble Training Center	62	63	40	63	63
National Exercise Program	40	42	40	40	40
Technical Assistance Programs	11	13	13	13	13
Evaluations and Assessments	16	18	16	18	16
Rural Domestic Preparedness Consortium	0	0	3	0	3
Management and Administration	— ^h	175	0	0	0
Total	4,776	3,868	3,959	4,217	4,166

Source: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-reported H.R. 2892 and H.Rept. 111-157, Senate-reported S. 1298 and S.Rept. 111-31, and P.L. 111-83.

Notes: Totals may not add due to rounding.

- a. This amount includes \$19 million for nonprofit organization security.
- b. This amount includes \$60 million for Operation Stone Garden.
- c. This amount includes \$550 million for port security, \$550 million for rail security, \$12 million for bus security, and \$8 million for trucking security.
- d. This amount includes \$250 million for port security, and \$250 million for rail security.
- e. This amount includes \$300 million for rail security, of which \$20 million for Amtrak security; \$300 million for port security; and \$12 million for bus security.
- f. This amount includes \$565 million for fire grants, and \$420 million for the SAFER program.
- g. This amount includes \$170 million for fire grants, and \$420 million for the SAFER program.
- h. Unlike FY2009, in FY2010, the Administration requests a specific budget authority for Management and Administration.

Other Provisions

A number of other provisions were provided in P.L. 111-83. The following lists four examples of the provisions. One appropriates \$220 million for flood map modernization. This is the same amount requested by the President and both chambers. Second, the Emergency Food and Shelter

(EFS) program received \$200 million, an amount equal to last year's appropriated amount. [Note: This program also received an additional \$100 million through the stimulus bill (P.L. 111-5.)]. Third, P.L. 111-83 also provided \$100 million for the Pre-Disaster Mitigation (PDM) program. This is a \$10 million increase over last years funding level. Further, Section 543 of this year's appropriations act also reauthorized the PDM program through September 30, 2010. Fourth, the direct loan program account, which allows FEMA to lend or advance funding to eligible applicants for their share of the cost-share provisions for eligible projects, received \$295 million.

FEMA Issues for Congress

*Pre-Disaster Mitigation*¹³⁴

The Pre-Disaster Mitigation (PDM) Program, Section 203 of the Stafford Act, awards mitigation grants on an annual basis and is not directly connected to disaster declarations.¹³⁵ It is intended to reduce the risk and impact of disasters prior to those events. (The Hazard Mitigation Grant Program, Section 404 of the Stafford Act, is a post-disaster program.¹³⁶) The FY2010 budget requested a \$60 million increase for PDM above last year's appropriated level, from \$90 million to \$150 million. This would return the program to the level of funding requested in 2005 and 2006. Authority for the PDM program will terminate on September 30, 2009.¹³⁷ The House has passed H.R. 1746, which extends authorization through FY2012. The Senate has yet to take action on the reauthorizing legislation. In the absence of any further action and with the necessity for program authorization, the FY2010 appropriations bill, P.L. 111-83, reauthorized the PDM program until September 30, 2010.

Authorized by the Disaster Mitigation Act of 2000, the PDM program has been directed by Congress since FY2003 to be run, in part, as a competitive grant program. This was a significant change as the authorizing legislation was shaped around minimum state allocations and community awards rather than on an individual project focus.¹³⁸ Since FY2008, PDM has also been subject to a significant number of congressionally directed awards. Taken as a whole, the authorized allocations, along with the earmarks, left relatively few program funds for the competitive process awards. FEMA is proposing in the FY2010 budget to "implement a base-plus-risk allocation program that will assist states, territories, and tribes."¹³⁹ This change would reflect FEMA's assessment of disaster risk and allocate all funding based on the statutory minimum allocation to each state of \$500,000, plus any remaining funding that would also be allocated through a national level risk analysis.¹⁴⁰ Report language for FY2010 objected to this change noting that "the Administration was unable to adequately articulate the ramifications or benefits of their new approach. Considering that pending legislation is vastly different from the

¹³⁴ Prepared by Francis X. McCarthy, Analyst in Emergency Management Policy, Government and Finance Division.

¹³⁵ 42 U.S.C. 5133, for more information see CRS Report RL34537, *FEMA's Pre-Disaster Mitigation Program: Overview and Issues*, by Francis X. McCarthy and Natalie Keegan.

¹³⁶ 42 U.S.C. 5170c, for more information see CRS Report R40471, *FEMA's Hazard Mitigation Grant Program: Overview and Issues*, by Natalie Keegan.

¹³⁷ P.L. 110-329, 122 Stat. 3690.

¹³⁸ P.L. 108-7, 117 Stat. 515.

¹³⁹ U.S. Department of Homeland Security, Federal Emergency Management Agency, *Fiscal Year 2010, Strategic Context, Congressional Justification*, p. FEMA-11.

¹⁴⁰ The pending legislation to reauthorize PDM (H.R. 1746) would also increase the state minimum amount to \$575,000.

Administration's new approach, the conferees do not approve the proposed change. Instead, the conferees direct FEMA to continue this program as it operated during fiscal year 2009."¹⁴¹

For FY2010 the House measure suggested a funding level of \$100 million, \$50 million below the amount requested by the Administration. The Senate amount, though higher at \$120 million, was \$30 million below the level in the budget request. P.L. 111-83 provided \$100 million for the PDM program. This law also extended the authorization for the PDM program through September 30, 2010.

Emergency Food and Shelter¹⁴²

The FY2010 request for the Emergency Food and Shelter (EFS) Program (Title III of the McKinney-Vento Homeless Assistance Act) was \$100 million. The \$100 million figure was the same amount requested by the previous administration for the program in the FY2009 budget request and one-half the amount initially appropriated by Congress. The budget request for FY2010 was a reduction of \$200 million from the total program appropriations in FY2009, which included an additional \$100 million from the stimulus legislation for the EFS program.¹⁴³ With the inclusion of stimulus funding, the total funds available to local homeless assistance providers in FY2010 EFS program is \$300 million, the largest amount in the program's 26-year history. The existence of the extra stimulus funds may have influenced the reduced request. However, since the funds are only available to the recipient agencies until December 31, 2009, a significant reduction would be absorbed through most of FY2010.¹⁴⁴ The FY2010 budget document places the program, a unique public-private partnership, under DHS goal 2: "Build a nimble, effective emergency response system and promote national resilience." The justification for the reduction is attributed to a "refocus of resources on the primary mission of preparing for and coordinating disaster response and recovery efforts while still providing substantial support for the EFS program."¹⁴⁵

The House-passed version of H.R. 2892 would have restored the EFS funding to last year's originally appropriated level of \$200 million (not including the stimulus amount). However, the Senate version of the bill put the EFS funding level at \$175 million, an increase over the Administration's request but a \$25 million reduction from the previous year (not including stimulus funding). P.L. 111-83 appropriated \$200 million for the EFS program.

FEMA-HUD Cooperation in Disaster Housing¹⁴⁶

Since Hurricane Katrina, and particularly following the response to Hurricane Ike, FEMA and HUD have collaborated on housing voucher programs. The conference report for the 2010

¹⁴¹ *Congressional Record*, Conference Report on H.R. 2892, Department of Homeland Security Appropriations Act, 2010 – (House of Representatives, Oct. 13, 2009), p. H11226, GPO's PDF.

¹⁴² Prepared by Francis X. McCarthy, Analyst in Emergency Management Policy, Government and Finance Division.

¹⁴³ P.L. 111-5, the American Recovery and Reinvestment Act of 2009, Feb. 17, 2009, 123 Stat. 164.

¹⁴⁴ The Emergency Food and Shelter National Board, *Current Phase Deadlines*, at <http://www.efsp.unitedway.org/>.

¹⁴⁵ Department of Homeland Security, Federal Emergency Management Agency, *Fiscal Year 2010, Congressional Justification, Emergency Food and Shelter Program*, p. EFS-14. Note: The EFS program is separate from Individual Assistance funds provided for disaster relief. However, the EFS National Board has provided additional funding to areas hit by catastrophic disasters, such as Florida following Hurricane Andrew, and Louisiana following Hurricane Katrina, as a response to the needs of homeless populations in those areas exacerbated by the disaster events.

¹⁴⁶ Prepared by Francis X. McCarthy, Analyst in Emergency Management Policy, Government and Finance Division.

Appropriations takes note of this partnership and instructs DHS/FEMA to “formalize” the partnership:

The conferees direct FEMA to formalize an agreement with HUD outlining the roles and responsibilities of both agencies following a disaster and clearly delineating when and how HUD should take the lead role in the federal housing response. Upon completion of the agreement, FEMA is directed to report to the appropriate Congressional committees on the resources and any legislative authority needed to implement the agreement.¹⁴⁷

State and Local Programs¹⁴⁸

In future appropriations, Congress could elect to address three issues when conducting oversight of appropriations for DHS’s state and local assistance programs. The first issue is the overall reduction in funding for state and local assistance programs, the second issue is the allocation method DHS uses to determine state and local grant awards, and the third issue is the reduction in appropriations for the Assistance to Firefighters Program.

Reduction in Total State and Local Assistance Funding. One issue that has been debated annually by Congress is the overall amount to be appropriated for these programs. In FY2010, the Administration proposed to reduce the overall funding for these programs by \$909 million. The House-passed version of H.R. 2892 proposed to reduce the overall funding for these programs in FY2010 by \$817 million and the Senate-passed version of H.R. 2892 proposed a reduction of \$559 million. With the enactment of the FY2010 DHS appropriations, Congress determined to fund FEMA programs with an approximate appropriation total of \$4,200 million, which was a reduction of \$610 million from the amount appropriated in FY2009. Some might argue that since over \$33,000 million has been appropriated and allocated for state and local homeland security, jurisdictions should have met their homeland security needs. This point of view could lead one to assume that Congress should reduce funding to a level that ensures states and localities are able to maintain their homeland security capabilities, but does not fund new homeland security projects. Additionally, some may argue that states and localities should assume more responsibility in funding their homeland security projects and the federal government should reduce overall funding. This, however, may be difficult due to the present state and local financial circumstances. Another argument for maintaining current funding levels is the ever-changing terrorism threat and the constant threat of natural and accidental man-made disasters. As one homeland security threat (natural or man-made) is identified and met, other threats develop and require new homeland security capabilities or processes. Some may also argue that funding amounts should be increased due to what appears to be an increase in natural disasters and their costs.

Allocation Methodology. Another potential issue of debate is how grant program funding is distributed to states and localities. Specifically, Congress might address funding distribution methodologies to ensure that states and localities meet their homeland security needs in future legislation. This issue has garnered Congress’s attention the most over the past eight years, with the issue addressed in P.L. 110-53 in January 2007. Specifically, P.L. 110-53 required that SHSGP and UASI allocations be based entirely on risk; however, SHSGP recipients were guaranteed a minimum amount annually through 2012.¹⁴⁹ This funding debate has been primarily focused on

¹⁴⁷ *Congressional Record*, Conference Report on H.R. 2892, Department of Homeland Security Appropriations Act, 2010 – (House of Representatives, Oct. 13, 2009), p. H11226, GPO’s PDF.

¹⁴⁸ Prepared by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, Government and Finance Division.

¹⁴⁹ P.L. 110-53, Title I, Sec. 101, ‘Title XX, Sec. 2007’, 121 Stat. 282.

SHSGP and UASI; funding allocation methodologies for the majority of GPD and NPD programs have not been discussed during this debate. Congress may wish to conduct oversight hearings on how DHS allocates homeland security funding to jurisdictions. Instead of guaranteed minimums, in the future Congress could require that DHS allocate funding based solely on risk. This option, however, might result in some jurisdictions receiving no or limited allocations. Arguably, a risk assessment process used to allocate homeland security assistance would determine that every state and locality has some risk, whether terrorism or natural disaster related, and needs some amount of funding. Such a process, however, would require DHS to evaluate state and local capabilities (currently DHS relies primarily on grant recipient self evaluations), vulnerabilities, and risk in a manner that accurately reflects the nation's current homeland security environment.¹⁵⁰

Reduction in Funding for the Assistance to Firefighters Program.¹⁵¹ For FY2010, the Administration proposed \$170 million for Assistance to Firefighter Grants (AFG), a 70% decrease from the FY2009 level, and \$420 million for SAFER (Staffing for Adequate Fire and Emergency Response Firefighters), double the amount appropriated in FY2009. The total amount requested for firefighter assistance (AFG and SAFER) was \$590 million, a 24% decrease from FY2009. The FY2010 budget proposal stated that the firefighter assistance grant process will give priority to applications that enhance capabilities for terrorism response and other major incidents.

AFG grants are used primarily for firefighting equipment, while SAFER grants are used for hiring (by career departments) and recruitment/retention (by volunteer departments). The \$170 million request for AFG would have been the lowest level for the program since FY2001, the program's initial year. On the other hand, the proposed doubling of the SAFER budget to \$420 million would have been the highest level for this program since its inception. In evaluating the budget proposal, Congress may assess whether there is an appropriate balance between funding for firefighter equipment and hiring/recruitment.

House-passed H.R. 2892 provided \$800 million for firefighter assistance, including \$390 million for AFG and \$420 million for SAFER. Although the SAFER level matches the Administration's request, the AFG level is more than twice what the Administration proposed. According to the House committee report, the Administration's request of \$170 million for AFG "is woefully inadequate given the vast needs of fire departments across the nation for equipment." The committee directed FEMA to continue granting funds to local fire departments, include the United States Fire Administration in the grant decision process, and maintain an all-hazard focus while granting eligibility for activities such as wellness.

Senate-passed H.R. 2892 provided \$810 million for firefighter assistance, including \$390 million for AFG and \$420 million for SAFER. The committee directed DHS to continue funding applications according to local priorities and priorities established by the United States Fire Administration, and to continue direct funding to fire departments through the peer review process.

P.L. 111-83 provided \$390 million for AFG and \$420 million for SAFER, identical to the levels in both the House and Senate-passed bills. The conference agreement directed FEMA to continue the present practice of funding applications according to local priorities and those established by

¹⁵⁰ For information on DHS evaluation of state and local government use of federal homeland security grants, see CRS Report R40246, *Department of Homeland Security Assistance to States and Localities: A Summary and Issues for the 111th Congress*, by Shawn Reese.

¹⁵¹ This section prepared by Lennard G. Kruger, Specialist in Science and Technology, Resources, Science, and Industry Division.

the USFA, to maintain an all-hazards focus, to grant funds for eligible activities in accordance with the authorizing statute, and to continue the current grant application and review process as specified in the House report.

Flood Map Modernization¹⁵²

The Administration has proposed transitioning the Flood Map Modernization program to a system that will review and update flood maps every five years. Neither the Administration request nor the bills approved by the House and Senate would provide additional funding for the program. P.L. 111-83 provides the same funding as requested by the Administration and both chambers (\$220 million). Some may question whether the increase in reviewing and updating of flood maps can be achieved without additional funding.

The Disaster Relief Fund¹⁵³

In the report “*A New Era of Responsibility*,” the Office of Management and Budget (OMB) claimed that prior FEMA budgets did not account for large disasters, permitting past administrations to project deficits that were lower than were likely to occur.¹⁵⁴ The President’s FY2010 budget submission sought an increase for the DRF of \$600 million to account for large-scale disasters. Congress has traditionally appropriated funds to maintain the DRF at a certain level, and then provided additional financing for assistance through supplemental appropriations following a specific large disaster.¹⁵⁵ Currently, the DRF generally funds disaster relief for emergencies and major disasters that cost \$500 million dollars or less. Major disasters costing more than \$500 million dollars are generally funded with emergency supplemental appropriations.

Compared to the President’s request, P.L. 111-83 provides \$1,600 million representing a 12% decrease from the original presidential request of \$2,000 million. Furthermore, the provisions in P.L. 111-83 transfer another \$126 million out of the account. Some may argue the reduced amount provided to the DRF underfunds federal disaster relief, creating a need for more emergency supplemental appropriations. If there is an increase of emergency supplemental appropriations due to a lack of funds in the DRF, Congress may elect to fund the DRF at higher levels in future, regular order appropriations.

Principal Federal Official¹⁵⁶

Some have claimed that there is ambiguity pertaining to the relationship and role of the Federal Coordinating Officer (FCO) and the Principal Federal Official (PFO).

The FCO determines the types of relief most urgently needed, establishes field offices, and coordinates relief efforts. The FCO position is authorized by the Stafford Act. Immediately upon

¹⁵² Prepared by Bruce R. Lindsay, Analyst in Emergency Management Policy, Government and Finance Division.

¹⁵³ Prepared by Bruce R. Lindsay, Analyst in Emergency Management Policy, Government and Finance Division.

¹⁵⁴ Office of Management and Budget, *A New Era of Responsibility: Renewing America’s Promise*, Washington DC, February 26, 2009, p. 36.

¹⁵⁵ For more information see CRS Report R40708, *Disaster Relief Funding and Emergency Supplemental Appropriations*, by Bruce R. Lindsay and Justin Murray.

¹⁵⁶ Prepared by Francis X. McCarthy, Analyst in Emergency Management Policy and Bruce R. Lindsay Analyst in Emergency Management Policy, Government and Finance Division.

declaring a major disaster, Section 302(a) of the Stafford Act requires the President to appoint an FCO.¹⁵⁷

The PFO, by comparison, is not a legislatively authorized position. Rather, the PFO position was created through executive action and is designated by the Secretary of DHS. The PFO represents the Secretary as the leading federal official and serves as the primary point of contact for state and local officials. To observers, the roles of the FCO and PFO created a great deal of confusion during Hurricane Katrina, because it appeared that two people were in charge of the relief operations.¹⁵⁸

Congress focused on the confusion involving the PFO in the Consolidated Appropriations Act, 2008 (P.L. 110-161). Section 526 of the act states that “none of the funds provided by this or previous appropriations Acts shall be used to fund any position designated as a Principal Federal Official for any Robert T. Stafford Disaster Relief and Emergency Assistance Act declared disasters or emergencies.”

Sec. 523 of House version H.R. 2892 reintroduced the prohibition stating that “none of the funds provided by this or previous appropriations Acts shall be used to fund any position designated as a Principal Federal Official for any Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) declared disasters or emergencies.”

Should the role of the PFO continue be of concern, Congress may elect to incorporate the funding prohibition into law, such as the Homeland Security Act, or Members might consider more precisely defining the role of the PFO in relation to that of the FCO.

Office of Health Affairs¹⁵⁹

The Office of Health Affairs (OHA) is responsible for coordinating any programs or activities within DHS that have a public health or medical component. These include several of the Homeland Security Grant programs, and medical care provided at ICE detention facilities. OHA is also responsible for administering several of these programs, including the BioWatch program, the National Biosurveillance Integration System (NBIS), and the department’s occupational health and safety programs.¹⁶⁰ Dr. Alexander G. Garza, President Obama’s nominee for the position, was confirmed by the Senate as Assistant Secretary of Homeland Security and Chief Medical Officer in August 2009.¹⁶¹ OHA received \$157 million in FY2009 appropriations.

President’s FY2010 Request

The President requested \$138 million for OHA for FY2010, \$19 million (12%) less than was provided in FY2009. The requested funding level would support 84 FTEs, 4 more than in FY2009. Most of the proposed decrease (\$17 million) would affect the BioWatch program,

¹⁵⁷ 42 U.S.C. 5143.

¹⁵⁸ U.S. Department of Homeland Security, Office of Inspector General, FEMA’s Preparedness for the Next Catastrophic Disaster, OIG/OIG-08-34, March 2008, p. 15, http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_08-34_Mar08.pdf.

¹⁵⁹ Prepared by Sarah A. Lister, Specialist in Public Health and Epidemiology, Domestic Social Policy Division.

¹⁶⁰ DHS, Office of Health Affairs, http://www.dhs.gov/xabout/structure/editorial_0880.shtm.

¹⁶¹ Formerly the position was titled Assistant Secretary for Health Affairs and Chief Medical Officer. The position of Chief Medical Officer is established at 6 U.S.C. § 321e. Senate confirmation is required, and certain qualifications are stipulated. The Assistant Secretary designation is provided under the DHS Secretary’s general authority to appoint assistant secretaries, at 6 U.S.C. § 113(a)(9).

discussed below. In addition, \$3 million would be cut from the Planning and Coordination account (under which numerous leadership and coordination activities are implemented) through decreases in compensation, travel, and use of contractor services. A \$1 million increase was proposed for Salaries and Expenses, to include an increase for information technology equipment costs for the National Capital Region.¹⁶²

House-Passed H.R. 2892

House-passed H.R. 2892 provided \$128 million for OHA, as recommended by the committee. This amount was \$29 million (18%) less than in FY2009, and \$10 million (7%) less than the President's request. Of the amount provided, \$30 million is for salaries and expenses, and \$98 million is for biosurveillance, BioWatch, medical readiness planning, chemical response, and other activities.

Senate-Passed H.R. 2892

Senate-passed H.R. 2892 provided \$135 million for OHA, as recommended by the committee. This amount was \$22 million (14%) less than in FY2009, and \$3 million (2%) less than the President's request. Of this amount, \$30 million is for salaries and expenses, and \$105 million is for biosurveillance, BioWatch, medical readiness planning, chemical response, and other activities.

P.L. 111-83

The law provided \$139 million for OHA. This amount was \$18 million (11%) less than in FY2009, and \$1 million (1%) more than the President's request. Of this amount, \$30 million is for salaries and expenses, and \$109 million is for biosurveillance, BioWatch, medical readiness planning, chemical response, and other activities.

Office of Health Affairs Issues for Congress

BioWatch: Effectiveness and Deployment

The BioWatch program deploys sensors in more than 30 large U.S. cities to detect the possible aerosol release of a bioterrorism pathogen. OHA has coordinated with S&T and others to develop a "real-time" (autonomous) replacement for the sensors currently in use, which require off-site laboratory testing that can delay detection for more than 24 hours. However, in the Spring of 2009, New York City discontinued its use of an autonomous sensor prototype when it was found to have performance problems.

Some Members of Congress and others have been concerned about certain aspects of the BioWatch program for several years. In FY2008, Congress provided funding for the National Academy of Sciences (NAS) to study the effectiveness of the program. This review is pending. In its FY2009 recommendation, the House committee recommended BioWatch funding substantially below the request, and expressed concern about OHA's plans to deploy two different versions of autonomous sensors concurrently while the NAS review was pending.¹⁶³ For FY2010, both the

¹⁶² OHA, *Fiscal Year 2010 Congressional Justification*, pp. OHA-38–OHA-47.

¹⁶³ U.S. Congress, House Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2009*, report to accompany H.R. 6947, 110th Cong., 2nd sess., September 18, 2008, H.Rept. 110-862 (Washington: GPO, 2008), pp. 106-107.

House and Senate committees recommended reductions in funding for BioWatch. In its report, the House committee expressed frustration with OHA's management of the program, recommended a redirection of some program funds to S&T for further sensor development, and reiterated reporting requirements from FY2009 that it says have not been met.¹⁶⁴ In the conference report, appropriators did not explicitly direct OHA to transfer a portion of BioWatch funds to S&T, but called for close collaboration between OHA and S&T in future sensor development.¹⁶⁵

*Transfer of the BioShield Special Reserve Fund*¹⁶⁶

OHA manages the Special Reserve Fund ("Biodefense Countermeasures"), the account Congress established for DHS and the Department of Health and Human Services (HHS) to purchase medical countermeasures against chemical, biological, radiological, and nuclear (CBRN) agents through Project BioShield.¹⁶⁷ For FY2010, the Administration proposed transferring management of this account and all of its remaining funds from DHS to HHS. The Department of Homeland Security Appropriations Act, 2004 (P.L. 108-90) advance-appropriated \$5,593 million for this account. The Administration estimated the transferred balance will be \$1,569 million after accounting for congressional rescissions, congressional transfers of funds to other programs, and actual and planned Project BioShield countermeasure obligations from FY2004-FY2009. This amount would be transferred to the HHS Public Health and Social Services Emergency Fund (PHSSEF). Of this amount, the Administration plans to keep in reserve \$1,264 million available for the purchase of medical countermeasures. The remaining \$305 million would fund countermeasure development through the Biodefense Advanced Research and Development Authority (BARDA) in an attempt to spur the development of countermeasures that might be purchased through Project BioShield.¹⁶⁸ This follows a similar transfer of \$275 million from this account to BARDA by the Omnibus Appropriations Act, 2009 (P.L. 111-8).¹⁶⁹

P.L. 111-83 did not transfer the Special Reserve Fund to HHS. The Senate Appropriations Committee stated that any such transfer would be executed through the appropriations bill for the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations.¹⁷⁰ The House-passed version of that bill (H.R. 3293) would transfer the Special Reserve Fund to HHS. The bill would divide the money in the DHS account between three accounts in HHS: (1) \$500 million for research in the National Institutes of Health, (2) \$305 million to support advanced research and development in BARDA, and (3) all remaining balances to the PHSSEF to procure countermeasures through Project BioShield.¹⁷¹

¹⁶⁴ H.Rept. 111-157, pp. 102-103.

¹⁶⁵ H.Rept. 111-298, p. 99.

¹⁶⁶ Prepared by Frank Gottron, Specialist in Science and Technology Policy, Resources, Science, and Industry Division.

¹⁶⁷ For more on Project BioShield, see CRS Report RS21507, *Project BioShield: Purposes and Authorities*, by Frank Gottron.

¹⁶⁸ Department of Health and Human Services, *Fiscal Year 2010 Budget in Brief*, May 7, 2009, p. 108, <http://www.hhs.gov/asrt/ob/docbudget/>.

¹⁶⁹ U.S. Congress, House Appropriations, *Omnibus Appropriations Act, 2009 (H.R. 1105; P.L. 111-8)*, committee print, 111th Cong., 1st sess., March 2009, p. 1301.

¹⁷⁰ U.S. Congress, Senate Committee on Appropriations, *Department of Homeland Security Appropriations Bill, 2010*, report to accompany S. 1298, 111th Cong., 1st sess., June 18, 2009, S.Rept. 111-31 (Washington: GPO, 2009), p. 96; and *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 2010*, report to accompany H.R. 3293, 111th Cong., 1st sess., August 4, 2009, S.Rept. 111-66 (Washington: GPO, 2009), p. 166.

¹⁷¹ For a discussion of policy issues arising from such transfers, see CRS Report RS21507, *Project BioShield: Purposes*

National Protection and Programs Directorate¹⁷²

The National Protection and Programs Directorate (NPPD) was formed by the Secretary for Homeland Security in response to the Post-Katrina Emergency Management Reform Act of 2006. The Directorate includes the Office of Infrastructure Protection, the Office of Cybersecurity and Communications, the Office of Risk Management and Analysis, and the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT). In FY2010, DHS is proposing moving the Federal Protective Service into the Directorate. The programs and activities of the Office of the Under Secretary for National Protection and Programs and the Office of Risk Management and Analysis, are supported within the Directorate's Management and Administration Program. The programs and activities of the Office of Infrastructure Protection and the Office of Cybersecurity and Communications are supported through the Infrastructure Protection and Information Security Program. The President's FY2010 budget requests \$1,319 million in budget authority for NPPD.

Management and Administration

The programs and activities of the Office of the Under Secretary are aggregated in Directorate Administration and support the other offices and programs within the Directorate. This support includes budget formulation and financial management, contract and program management, information technology, business culture (i.e., employee relations), and communications, among other things.

The Office of Risk Management and Analysis (RMA) was established as part of the Post-Katrina Emergency Reform Act of 2006. It had formerly been a division within the Office of Infrastructure Protection. The RMA now reports directly to the Under Secretary. The responsibility of this office is to help develop and implement a common risk management framework¹⁷³ and to leverage risk management expertise throughout the entire department.

President's FY2010 Request

DHS requested \$45 million for NPPD Management and Administration (**Table 16**). This is nearly \$7 million below last year's enacted appropriation, even after requesting 40 new positions (26 within Directorate Administration and 14 within the Office of Risk Management and Analysis). A net reduction in the account's base funding accounted for the lower funding. Funding for the additional positions were offset by reductions in program funds. Most of these offsets came from contracted services. The additional reduction in Directorate Administration was due the transfer of rent costs out of the Directorate Administration's base budget. Neither activity requested changes in current services.

and Authorities, by Frank Gottron.

¹⁷² Prepared by John Moteff, Specialist in Science and Technology Policy, Resources, Science and Industry Division.

¹⁷³ This framework includes the development of a risk management lexicon, risk performance metrics, a risk communication strategy, and support for the development and vetting of new risk management tools and techniques.

Table 16. FY2009 Budget Activity for NPPD Management and Administration Appropriation

(budget authority in millions of dollars)

Program Project Activity	FY2009 Enacted	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
Directorate Administration	42	35	35	35	35
Risk Management and Analysis	10	10	10	10	10
Total	51	45	45	45	45

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-reported H.R. 2892 and H.Rept. 111-157, and Senate-reported S. 1298 and S.Rept. 111-31.

Note: Tables may not add due to rounding.

Issues for Congress

This year's budget request does not appear to raise any significant issues. Of the offices located within the Directorate Administration, only the Office of Resource Administration identified new hires in its budget justification language. Through its oversight responsibility, Congress might ask where the requested new hires will be located and what they will be doing. They may be doing the work formerly being done by contractors.

Within the Office of Risk Management and Analysis, Congress might ask how the development of RAPID, the Risk Assessment Process for Informed Decision-making, is progressing. RAPID is being designed to be incorporated into the Department's planning, programming, and budgeting system, to help the Department allocate resources in a more analytical risk-informed process. Since incorporating this process involves buy-in from across the Department, Congress might ask how the program is progressing from the perspective of a variety of DHS components.

House Passed H.R. 2892

The House provided the amount requested for Management and Administration.

Senate Passed H.R. 2892

The Senate, too, provided the amount requested for Management and Administration. However, in its report language, the Senate Appropriations Committee took NPPD management to task for its "inability to clearly articulate goals, demonstrate accomplishments, hire needed staff, obligate appropriated resources, or describe its programs." The committee required that NPPD provide quarterly briefings to the committee on its specific use of resources. In addition, the committee required NPPD to submit an expenditure plan for RMA, identifying specific projects, quantifiable outcomes, and how programs contribute to the agency's mission.

P.L. 111-83

P.L. 111-83 fully funded the Management and Administration account, and followed the recommendations of the Senate in regard to quarterly briefings and the submission of an expenditure plan for RMA.

U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT)¹⁷⁴

Until FY2006, US-VISIT was coordinated out of the Directorate of Border and Transportation Security (BTS). DHS Secretary Chertoff's second stage review, among other things, eliminated BTS and proposed placing US-VISIT within a new Screening Coordination Office (SCO) that would have combined a number of screening programs within DHS¹⁷⁵ and that would have reported directly to the Secretary. The appropriators did not provide funding for the SCO, however, and US-VISIT became a stand-alone office within Title II of the DHS appropriation in FY2006.¹⁷⁶ In FY2008, DHS transferred US-VISIT into a new entity, the National Protection Programs Directorate (NPPD). In its Section 872 letter, DHS stated that it was relocating US-VISIT to the NPPD "to support coordination for the program's protection mission and to strengthen DHS management oversight."¹⁷⁷

President's FY2010 Request

The Administration requested \$356 million for US-VISIT in FY2010, an increase of \$56 million from the FY2009 enacted level of \$300 million. Included in the Administration's request is an increase of \$42 million for additional US-VISIT infrastructure technology enhancements and development of new capabilities supporting Automated Biometric Identification System (IDENT) and the Arrival and Departure Information System (ADIS). Other program changes identified by US-VISIT include program management services, identity management and screening, data center mirror and migration, and unique identity.

House-Passed H.R. 2892

The House-passed H.R. 2892 would have appropriated \$352 million for US-VISIT, including \$119 million for Program Management Services; \$128 million for Operations and Maintenance; \$31 million for Identity Management and Screening Services; \$29 million for Unique Identity & Interoperability; and \$45 million migrating data operations from the current Department of Justice data centers to a DHS data center. The House report would have continued to require an expenditure plan, and would have withheld \$75 million of funding until an expenditure plan was provided. Additionally, the House report explicitly would not have provided funding for development of a biometric exit solution at ports of entry. The report also expressed concern about the growing backlog within US-VISIT of resolving suspected visa "overstays."

Senate-Passed H.R. 2892

The House-passed H.R. 2892 would have included \$378 million for US-VISIT. The additional funding above the President's budget request would have gone towards the implementation of a biometric air exit capability with the system. As with the House report, the Senate report also

¹⁷⁴ Prepared by Chad C. Haddal, Analyst in Immigration Policy, Domestic Social Policy Division.

¹⁷⁵ Programs proposed for transfer to the Screening Coordination Office included the US Visitor and Immigrant Status Indicator Project (US-VISIT); Free and Secure Trade (FAST) and NEXUS/SENTRI, from CBP; and Secure Flight, Transportation Worker Identification Credential (TWIC), Registered Traveler, Hazardous Materials (HAZMAT) background checks, and the Alien Flight School background checks program from TSA.

¹⁷⁶ H.Rept. 109-241.

¹⁷⁷ U.S. Department of Homeland Security, letter from Secretary Michael Chertoff to the Honorable Joseph I. Lieberman, Chairman, Committee on Homeland Security and Government Affairs, U.S. Senate, Washington, DC, January 18, 2007, p. 8.

would have required the timely submission of spending plans to Congress. The report additionally voiced its support for the continuing expansion and integration of the 10 fingerprint collection system and the development of Unique Identity.

P.L. 111-83

P.L. 111-83 included \$378 million for US-VISIT; \$75 million of this funding could not be obligated until the submission of spending plans to Congress, within 90 days of enactment. The report language additionally voiced its support for the continuing development and implementation of Unique Identity and a biometric air exit capability with the US-VISIT system, and provides a total of \$50 million towards that end.

US-VISIT Issues for Congress

There are a number of issues that Congress may face relating to the implementation of the US-VISIT system. These issues may include whether the Administration's proposed pilot project for deploying the exit component at land POE is appropriate, whether the current plan to deploy the exit component at air POEs is adequate, and whether the current POE infrastructure can support the added communication load that a 10 fingerprint system would likely require.

10 Fingerprint Entry

In FY2009, US-VISIT plans to finish deploying 3,000 new 10 fingerprint scanners to the 292 POE where the US-VISIT system is currently operational—an action taken after US-VISIT deemed successful an FY2008 pilot program to assess the impact of the program's expansion on the infrastructure at POE and wait times for travelers entering the United States. Issues for Congress could include what kind of impact the ongoing database integration efforts with other databases could have on the accuracy and operation of IDENT,¹⁷⁸ whether the 10 fingerprint technology that gets implemented can produce fast and effective results, and what kind of an impact the deployment of the system to all ports of entry will have on the travel times for individuals entering the country.

Exit Component at Air and Sea Ports

Deployment of a biometric exit system has been of concern to Congress for a number of years. Without verifying the identity of travelers who leave the United States, DHS has no easy way of identifying individuals who overstay their visas and remain in the country illegally. For the past several years, US-VISIT has been heavily criticized for not implementing an exit system at ports of entry. Although the budget justifications provided by US-VISIT are unclear on the extent to which an exit system has been developed, the justifications do note that in FY2009 IDENT users will be informed that biometric data will be collected from non-citizens exiting from the United States from air and sea ports. US-VISIT has not requested any specific appropriations relating to

¹⁷⁸ IDENT is a system used CBP that is composed of two databases: (1) a "lookout" database that contains fingerprints and photographs of aliens who have been previously deported or have a criminal history; and (2) a "recidivist" database that contains fingerprints and photographs of illegal aliens who have been apprehended by the border patrol. IDENT uses a biometric identifier (the left and right index fingerprints and a photo) to obtain information on selected aliens seeking entry into the United States.

an exit system.¹⁷⁹ The exact nature of US-VISIT's exit system strategy may be an issue that Congress will examine, given the intense congressional interest on this topic in the past.

Infrastructure Protection and Information Security¹⁸⁰

The Infrastructure Protection and Information Security Program (IPIS) supports the activities of the Office of Infrastructure Protection (OIP), and the Office of Cybersecurity and Communications. The latter includes the National Cyber Security Division (NCSD), the National Communication System (NCS), and the Office of Emergency Communications (OEC). OIP coordinates the national effort to reduce the risks associated with the loss or damage to the nation's critical infrastructure due to terrorist attack or natural events. This effort is a cooperative one between the federal government, state, local and tribal governments, and the private sector, to identify critical elements of the nation's infrastructure, their vulnerabilities, the potential consequences of their loss or damage, and ways to mitigate those losses. The NCSD performs a similar function, but specifically focuses on the nation's information networks. The NCS also performs similar function, but specifically focuses on the nation's communication systems, in particular the communications systems and programs that ensure the President can communicate with selected federal agencies, state, local, and tribal governments, and certain private sector entities during times of national emergencies. The OEC is responsible for promoting the ability of state, local and federal emergency response providers to communicate with each other during an emergency through the development and distribution of interoperable communication equipment.

President's FY2010 Request

DHS requested approximately \$111 million more for FY2010 than was appropriated in FY2009 (Table 17). Approximately \$24 million of this increase is due to adjustments in the account's base funding, the remaining \$87 million is the net increase associated with requested program changes (including the addition of 38 FTEs). The National Cyber Security Division program received the bulk of these requested increases (\$69 million). This included requested increases in Network Security Deployment¹⁸¹ (\$40 million), US-CERT Operations (\$16 million), and Cybersecurity Coordination (\$13 million). Outside of the National Cyber Security Division, the largest requested increase was for Infrastructure Security Compliance in Mitigation Programs (\$19 million).¹⁸² The three largest requested reductions in programs were for National Infrastructure Protection Plan Management and Critical Infrastructure and Key Resources Partnerships in the Coordination and Information Sharing program (-\$11 million), termination of the National Command and Coordination Capability (-\$6 million), and Wireless Priority Service in the Priority Telecommunications Service program (-\$5 million). DHS also requested \$4 million less for the National Infrastructure Simulation and Analysis Center (NISAC) within the Identification and Analysis program. Other reductions included relatively small programs Congress added to the budget in FY2009.

¹⁷⁹ *DHS FY2010 Justification*, p. NPPD US-VISIT 22-23.

¹⁸⁰ Prepared by John Moteff, Specialist in Science and Technology Policy, Resources, Science and Industry Division.

¹⁸¹ The Network Security Deployment activity involves the placement of intrusion detection sensors throughout the federal government's computer networks. The activity has been called Einstein in the past. The increase in funding would be to expand the deployment with improved sensors.

¹⁸² Infrastructure Security Compliance enforces DHS security regulations related to sites containing certain amount of harmful chemicals and ammonium nitrate.

Table 17. FY2009 Budget Activity for the Infrastructure Protection and Information Security Appropriation

(budget authority in millions of dollars)

Program Project Activity	FY2009 Enacted^a	FY2010 Request	FY2010 House- Passed	FY2010 Senate- Passed	FY2010 Enacted
IP	314	333	346	346	347
Identification and Analysis	(87)	87	87	91	91
Coordination and Information Sharing	(56)	51	63	60	60
Mitigation Programs	(171)	196	197	196	197
NCSD	314	401	382	399	397
NCS	141	140	110	112	110
Priority Telecom Service	(59)	57	57	57	57
Programs to Study and Enhance Telecom	(15)	19	17	17	17
Critical Infrastructure Protection	(11)	14	11	14	11
Next Generation Networks	(50)	50	25	25	25
Nat'l Command and Coordination Capability	(6)	0	—	—	—
OEC	38	44	45	44	45
Total	807	918	883	901	899

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Notes: Tables may not add due to rounding. IP=Infrastructure Protection; NCSD=National Cyber Security Division; NCS=National Communications System; OEC=Office of Emergency Communications.

- a. The table reflects the FY2010 proposed program realignments and restructuring. In other words, the FY2009 figures in the table are what the FY2009 appropriations would have looked like given the new realignment/restructuring. In addition, DHS presented the major PPAs differently for FY2010 than in FY2009, breaking IP and NCS down into the next level of PPAs, though not for NCSD or OEC. Therefore, IP and NCS are left blank in FY2010, and their component elements in FY2009 are shown in parentheses.

House Passed H.R. 2892

The House approved \$883 million for IPIS, \$35 million below the request. Much of the reduction (\$25 million) was allocated to the Next Generation Networks program within the National Communications System (NCS) line item. Last year, Congress withheld approximately \$25 million from this program (approximately half of the requested budget) until the committee received an expenditure plan. The plan has not yet been submitted. Therefore, the House reduced this year's request by the same amount, and would withhold all of it until the plan is received.

The National Cyber Security Division line item request was reduced by \$19 million. The House provided no funds for Cyber Security Coordination, Cyber Security Information Sharing and Collaboration, or the migration and consolidation of the U.S.-CERT data center. Elimination of the latter program was in response to an Inspector General's report citing security issues at the proposed new location. In addition, \$155 million, or approximately half of the U.S.-CERT appropriation, is to be withheld until an updated expenditure plan for the National Cyber Security

Initiative is provided. The House increased funding (\$1 million) for training and education of state and local officials in cyber security. It also provided \$3 million for the establishment of a cyber security test bed in Research Triangle Institute in North Carolina.

Finally, the House added \$12 million to the budget request for NIPP management, reversing the budget's proposed decrease.

Senate Passed H.R. 2892

The Senate provided \$901 million for IPIS, \$17 million less than what was requested. As in the House, the Senate voted to cut \$25 million from the NCS Next Generation Networks request, because of the delayed expenditure plan. It also reduced funding for U.S.-CERT's migration of its data center by \$2 million, but in response to activities not scheduled to take place until FY2011. The Senate made no mention of the IG report.

The Senate increased funding for NIPP management by \$9 million, and for the NISAC by \$4 million.

P.L. 111-83

P.L. 11-83 provided \$899 million for IPIS. This included a \$14 million increase above the budget request for IP. The act followed the Senate's recommendation by adding \$4 million to the NISAC request and \$9 million to the National Infrastructure Protection Plan Management and Critical Infrastructure and Key Resources Partnerships program request (the budget request had reduced those two programs by \$4 million and \$11 million below the FY2009 appropriation, respectively). The act reduced the NCSD request by \$4 million. However, funds were included for Cyber Security Coordination, the Cyber Security Information Sharing and Collaboration program, and migration of activities from the former National Cyber Security Center (the House did not fund these programs). The act followed the House recommendation in funding NCSD Strategic Initiatives, including specified amounts of funding for activities at selected facilities. The act provided approximately \$30 million less for National Security/Emergency Preparedness (i.e., the NCS), with \$25 million of that coming from the Next Generation Networks program (as recommended by both chambers). The act withheld half of the remaining \$25 million allocated for that program until an expenditure plan is provided Congress.

IPIS Issues for Congress

The requested increase of \$13 million for Cyber Security Coordination represents a new activity within the NCSD program. However, it does not include funding for any new FTEs. Nor is it clear how the functions described in the budget justification differ from those associated with US-CERT Operations. As part of its oversight responsibilities, Congress might ask for more clarification on how the additional \$13 million will be spent.

Also, it is not clear how the Obama Administration's internal review of its cyber security initiatives relates to or is reflected in this budget request. Congress might ask for further clarification on this point.

The reductions sought by the budget request are programs that Congress has added, or added to, in the past, and may be an issue as the Congress considers the request.

The primary difference between the House and Senate passed version of the bill (see below) are cuts made by the House in the NCSD programs. Whereas the House chose not to fund 3 programs in that line item, the Senate voted to reduce them. Another difference is the House voted to withhold funds until certain expenditure plans are provided. The Senate did not.

Title IV: Research and Development, Training, Assessments, and Services

Title IV includes appropriations for U.S. Citizenship and Immigration Services (USCIS), the Federal Law Enforcement Training Center (FLETC), the Science and Technology Directorate (S&T), and the Domestic Nuclear Detection Office (DNDO). **Table 18** provides account-level details of Title IV appropriations.

Table 18. Title IV: Research and Development, Training, Assessments, and Services

(budget authority in millions of dollars)

Operational Component	FY2009 Appropriation				FY2010 Appropriation			
	FY2009 Enacted	FY2009 Supp.	FY2009 Resc.	FY2009 Total	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Citizenship and Immigration Services								
Total available budget authority	2,641			2,641	2,867	2,801	2,639	2,727
Offsetting Fees ^a	-2,539			-2,539	-2,503	-2,503	-2,503	-2,503
Net subtotal (Direct appropriation)	102			102	364	298	136	224
Federal Law Enforcement Training Center	333			333	289	283	288	283
Science and Technology								
Management and Administration	132			132	142	142	143	143
Research, Development, Acquisition, and Operations	800			800	826	825	852	863
Net Subtotal	933			933	968	968	995	1,006
Domestic Nuclear Detection Office								
Management and Administration	38			38	40	40	38	39
Research, Development, and Operations	323			323	327	327	327	325
Systems Acquisition	153			153		50	10	20
Net Subtotal	514			514	366	416	374	383
Gross budget authority: Title IV	4,421			4,421	4,490	4,468	4,295	4,399
Offsetting collections: Title IV	-2,539			-2,539	-2,503	-2,503	-2,503	-2,503
Net budget authority: Title IV	1,882			1,882	1,987	1,965	1,792	1,896

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Notes: Tables may not add due to rounding.

a. Fees include Immigration Examination Fund; H-1b Visa Fee; and the Fraud Prevention and Detection Fee.

U.S. Citizenship and Immigration Services (USCIS)¹⁸³

There are three major activities that dominate the work of the U.S. Citizenship and Immigration Services (USCIS): the adjudication of immigration petitions (including nonimmigrant change of status petitions, relative petitions, employment-based petitions, work authorizations, and travel documents); the adjudication of naturalization petitions for legal permanent residents to become citizens; and the consideration of refugee and asylum claims, and related humanitarian and international concerns. USCIS funds the processing and adjudication of immigrant, nonimmigrant, refugee, asylum, and citizenship benefits largely through funds generated by the Examinations Fee Account.¹⁸⁴ **Table 19** shows FY2009 appropriations and the FY2010 request.

President's FY2010 Request

USCIS is a fee supported agency. As part of the former Immigration and Naturalization Service (INS), USCIS was directed to transform its revenue structure with the creation of the Examinations Fee Account.¹⁸⁵ Although the agency has received direct appropriations in the last decade, these appropriations have been largely directed towards specific projects such as backlog reduction initiatives. The vast majority of the agency's revenues, however, comes from the adjudication fees of immigration benefit applications and petitions. In the President's FY2010 budget request, the agency requested \$364 million in direct appropriations. The remaining \$2,503 million in gross budget authority requested would be funded by revenues from collected fees.

As **Table 19** shows, the requested USCIS gross budget authority for FY2010 was approximately \$2,867 million. The requested direct appropriation of \$364 million included \$112 million for the E-Verify program, and \$25 million for REAL ID Act implementation. Moreover, the agency requested \$10 million for a new Immigrant Integration Initiative and \$11 million for data center development. USCIS is also proposing to fund asylum and refugee applications and military naturalizations—all which have no fees attached—with a direct appropriation of \$206 million. All other programs and operations would be fee funded. Of the fee-collected funds for FY2010, \$1,953 million would fund the USCIS adjudication services. The President's budget request also included requested funding levels of \$154 million for information and customer services, \$375 million for administration, and \$21 million for the Systematic Alien Verification for Entitlements (SAVE) Program.

Table 19. USCIS Budget Account Detail

(budget authority in millions of dollars)

Program/Project Activity	FY2009 Enacted	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Appropriations	102	364	298	136	224

¹⁸³ Prepared by Chad C. Haddal, Analyst in Immigration Policy, Domestic Social Policy Division.

¹⁸⁴ §286 of the Immigration and Nationality Act, 8 U.S.C. §1356.

¹⁸⁵ There are two other fee accounts at USCIS, known as the H-1B Nonimmigrant Petitioner Account and the Fraud Prevention and Detection Account. The revenues in these accounts are drawn from separate fees that are statutorily determined (P.L. 106-311 and P.L. 109-13, respectively). USCIS receives 5% of the H-1B Nonimmigrant Petitioner Account revenues and 33% of the Fraud Detection and Prevention Account revenues. In FY2007, the USCIS shares of revenues in these accounts were approximately \$13 million each, and the funds combined for a little less than 2% of the USCIS budget (U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Fiscal Year 2009 Congressional Budget Justifications*).

Program/Project Activity	FY2009 Enacted	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
REAL ID Act Implementation	— ^a	25	25	—	10
Asylum/Refugee Operating Expenses	1	—			
E-Verify (Basic Pilot Program)	100	112	162	119	137
Data Development Center	—	11		11	11
Citizenship Education Grants	1	—			
Immigrant Integration Initiative	—	10	11	1	11
Asylum, Refugees, & Military Naturalizations Processing	—	206	100	5	55
Fee Collections	2,539	2,503	2,503	2,503	2,503
Adjudication Services	1,979	2,027	1,953	2,027	2,027
Information and Customer Services	168	89	154	89	89
Administration	374	366	375	366	366
SAVE	19	21	21	21	21
Total USCIS Funding	2,641	2,867	2,801	2,639	2,727

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, and Senate-passed H.R. 2892 and S.Rept. 111-31.

Notes: Tables may not add due to rounding.

- a. USCIS requested \$50 million for REAL ID implementation in the FY2009 Budget Request. This funding was provided in the general provisions of P.L. 110-329.

House-Passed H.R. 2892

The House-passed H.R. 2892 would have provided \$298 million in direct appropriations to USCIS, including \$100 million for processing refugee applications and asylum claims,¹⁸⁶ \$162 million for E-Verify, \$11 million for immigrant integration programs, and \$25 million to complete REAL ID hub development. The funding for REAL ID would have been withheld until USCIS submitted an expenditure plan for these funds. The House report criticized the accuracy of the E-Verify system—particularly in regards to individuals that have naturalized—and called upon USCIS publish regular audits, as well as set up a compliance group to monitor employer behavior. The bill would have further allowed H and L Visa Fraud collections to be used for fraud investigation in other programs. Also, USCIS would have been permitted to charge fees for services related to Temporary Protected Status (TPS) applications (although the TPS application

¹⁸⁶ The House-passed version of the bill would not provide any funding for military naturalizations. Instead, the report language states that the House Appropriations Committee would expect USCIS to be reimbursed for these naturalizations by the Department of Defense.

itself would at its current cost of \$50). Finally, within the fee collections, the House-passed H.R. 2892 would have required that no less than \$29 million be used for converting immigration records to a digital format.

Senate-Passed H.R. 2892

The Senate-passed H.R. 2892 would have provided \$136 million in direct appropriations to USCIS, including \$119 million for E-Verify, \$11 million for data center consolidation, \$5 million for military naturalizations, and \$1 million to immigrant integration programs. The proposed resources to cover the costs of refugee, asylum-seeker, and military naturalization processing were largely rejected by the Senate, with funds being provided only for military naturalizations in Senate-passed H.R. 2892. In terms of E-Verify, the report noted that progress had been made on the accuracy of the system, and urged USCIS to continue its outreach efforts. Finally, the report noted that the FBI name check backlog has been virtually eliminated in the past year.

P.L. 111-83

P.L. 111-83 provided \$224 million in direct appropriations to USCIS, including \$137 million for E-Verify, \$50 million for processing refugee applications and asylum claims, \$11 million for data center consolidation, \$5 million for military naturalizations, and \$11 million for immigrant integration programs, and \$10 million to complete REAL ID hub development. The funding for refugee and asylum processing is to be withheld until USCIS implements regulatory revisions for explaining how and when the existing \$40 immigration application surcharge for funding refugee and asylum applications will be discontinued.

USCIS Issues for Congress

For the FY2010 budget cycle, some potential issues for Congress include the decline in immigrant and nonimmigrant applications and the use of fee-generated funding, as well as the USCIS request for appropriations to process refugee, asylees, and military naturalization applications.

Application Declines and Fee-generated Funding

Because USCIS has been almost completely fee supported for many years, accurate projections of the number of applications that will require processing are essential in order to avoid building backlogs or over-budgeting projects. In the past few years, USCIS has been criticized for its handling of application backlogs and allegedly being underprepared for the surge of applications in the wake of the 2007 fee increases.¹⁸⁷ More recently, the global economic downturn has highlighted projection concerns, as some observers believe the number of applications submitted to USCIS could decrease (thereby decreasing the agency's revenues). If such revenue declines do occur, USCIS may need to forgo certain future projects or request appropriated funds from Congress. Indeed, H.Rept. 111-157 to H.R. 2892 states that USCIS revenues fell 6.2% below projections for the first six months of FY2009. Moreover, if the lower fee collections were to continue, the report concluded that FY2010 processing costs could exceed fee collections by \$100 million. In order to address this issue, USCIS has among other things taken steps to ensure more accurate application projections as a means of informing the budgeting process.¹⁸⁸

¹⁸⁷ For more information, see CRS Report RL34040, *U.S. Citizenship and Immigration Services' Immigration Fees and Adjudication Costs: The FY2008 Adjustments and Historical Context*, by Chad C. Haddal.

¹⁸⁸ Information is based upon CRS discussions with USCIS Chief Financial Officer.

Appropriations for Waiver Applications

In the FY2010 presidential budget request, USCIS has requested direct appropriations of \$206 million for funding applications for refugees, asylum-seekers, and military naturalizations. Historically, these applications (for which the fees are waived for the applicants) have been funded through revenues generated by application fees charged to other applicants. In previous years, Congress has had debates over providing USCIS with direct appropriations for application processing and the fees. Thus, the proposal to fund these applications with direct appropriations may be an issue of concern to Congress as it considers the FY2010 request.

Federal Law Enforcement Training Center¹⁸⁹

The Federal Law Enforcement Training Center (FLETC) provides law enforcement instruction, such as firearms training, high speed vehicle pursuit, and defendant interview techniques, for 81 federal entities with law enforcement responsibilities. FLETC also provides training to state and local law enforcement entities and international law enforcement agencies. Training policies, programs, and standards are developed by an interagency board of directors, and focus on providing training that develop the skills and knowledge needed to perform law enforcement activities. FLETC administers four training sites throughout the United States and employs more than 1,000 personnel.

President's FY2010 Request

The overall request for FLETC in FY2010 was \$289 million, a decrease of \$44 million from the FY2009 appropriation of \$333 million. The Administration intends to implement a one-time decrease of 53 FLETC positions and 52 FTEs in FY2010.¹⁹⁰ In FY2010, FLETC officials intend to:

- train over 85,000 students;
- receive re-accreditation for its Law Enforcement Fitness Coordinator Training Program, the Law Enforcement Instructor In-Service Training Program, the Criminal Investigator Training Program, and the Inland Boat Operators Training Program; and
- continue construction of the multi-phased Practical Application/Counterterrorism Operational Training facility.¹⁹¹

House-Passed H.R. 2892

The overall House-passed budget authority for FLETC in FY2010 was \$283 million, a decrease of \$50 million from the FY2009 appropriation of \$333 million. Of the amount recommended, \$43 million would have been used for acquisitions, construction, improvements, and related expenses. The remaining \$239 million was proposed for necessary expenses including materials and support costs of FLETC training; the purchase of no more than 117 vehicles; expenses for student athletic activities; the conduct of and participation in firearms matches; public awareness and

¹⁸⁹ Prepared by Shawn Reese, Analyst in Emergency Management and Homeland Security Policy, Government and Finance Division.

¹⁹⁰ U.S. Department of Homeland Security, Federal Law Enforcement Training Center, *Fiscal Year 2010 Strategic Context, Congressional Submission*, Washington, DC, May 2009, pp. FLETC-1 - FLETC-2.

¹⁹¹ Ibid.

enhancement of community support of law enforcement training; room and board for students; and other operational and support activities.

Senate-Passed H.R. 2892

The overall Senate-passed budget authority for FLETC in FY2010 was \$288 million, a decrease of \$45 million from the FY2009 appropriation of \$333 million. The Senate-passed amount for acquisitions, construction, improvements, and related activities (\$43 million) was identical to the House-passed amount. Also the remaining \$244 million would have been used for the same necessary expenses as the House-passed expenses.

P.L. 111-83

Conferees agreed to the House recommendation, as described above. Additionally, the conference agreement requires the Federal Law Enforcement Training Accreditation Board to measure and assess the quality and effectiveness of FLETC's programs, facilities, and instructors. Finally, the FLETC Director is required to schedule basic and advanced law enforcement training to ensure that all the FLETC facilities are operated at the highest capacity throughout the fiscal year.

Science and Technology (S&T)¹⁹²

The Directorate of Science and Technology (S&T) is the primary DHS organization for research and development (R&D).¹⁹³ It performs R&D in several laboratories of its own and funds R&D performed by the national laboratories, industry, and universities. See **Table 20** for details of the directorate's appropriation.

President's FY2010 Request

The Administration requested a total of \$968 million for the S&T Directorate for FY2010. This was 4% more than the FY2009 appropriation of \$933 million. The request for the Command, Control, and Interoperability Division included a proposed net increase of \$5 million to a total of \$80 million. Within this \$80 million total, a proposed increase of \$15 million for next-generation cyber security R&D was largely offset by reductions in the division's other activities. A proposed increase of \$25 million for the Explosives Division included \$10 million to develop technologies for high-throughput screening of air cargo and \$15 million to develop technologies for detection of improvised explosive devices in mass transit and at large events. A proposed reduction of \$31 million for the Infrastructure and Geophysical Division included the elimination of funding for local and regional initiatives previously established or funded at congressional direction. The request for Laboratory Facilities included \$36 million for the planned National Bio and Agro Defense Facility (NBAF), about the same as in FY2009. A proposed increase of \$16 million for the Transition program included \$5 million for the Homeland Security Studies and Analysis Institute, formerly the Homeland Security Institute, which was funded as a separate item in FY2009.

¹⁹² Prepared by Daniel Morgan, Specialist in Science and Technology Policy, Resources, Science, and Industry Division.

¹⁹³ Two other DHS organizations also conduct R&D: the Domestic Nuclear Detection Office (see next section) and the U.S. Coast Guard (see Title II above).

House-Passed H.R. 2892

The House bill would provide \$15 million to the S&T Directorate to fund developmental testing of the BioWatch Generation 3 biological agent detection system.¹⁹⁴ The Administration requested these funds for the Office of Health Affairs, which the House bill would leave in control of the BioWatch program other than Generation 3 development. The House bill would also provide \$10 million in the Infrastructure and Geophysical Division for local and regional initiatives. It would also eliminate the requested funding for NBAF construction and prohibit the obligation of any funds for that purpose until the Secretary of Homeland Security receives a non-DHS assessment of the risks of conducting R&D on foot-and-mouth disease on the U.S. mainland.

Senate-Passed H.R. 2892

The Senate bill would provide \$23 million more than the request in the Infrastructure and Geophysical Division for local and regional initiatives. It would provide the full requested funding for NBAF construction but would prohibit the obligation of funds for that purpose until 90 days after DHS completes a site-specific safety and security assessment and reports to the appropriations committees on its foot-and-mouth disease research permit procedure and emergency response plan. The Senate bill would also rescind \$7.5 million appropriated in prior years but not yet obligated. Report language would direct S&T to the Senate Appropriations Committee on the test and evaluation status of all level 1 DHS acquisition programs (i.e., programs with total lifecycle costs of \$1 billion or more).

P.L. 111-83

The final bill provided a total of \$1,006 million for the S&T Directorate, an increase of \$38 million above the request. It provided \$30 million more than the request for Infrastructure and Geophysical in order to fund local and regional initiatives. It provided \$32 million for NBAF construction and included requirements for safety and security assessment and reporting that were similar to those of the Senate bill with an additional provision for the National Academy of Sciences to evaluate the assessment. It rescinded \$6.9 million in unobligated appropriations from prior years. The conferees expressed their expectation that S&T will be “intricately involved” in the testing and evaluation of BioWatch Generation 3, but the bill did not remove Generation 3 activities from the Office of Health Affairs. The bill directed the S&T Directorate to brief the appropriations committees jointly with Customs and Border Protection before beginning operational field testing of SBInet and to report quarterly to the appropriations committees on the test and evaluation status of all level 1 acquisitions.¹⁹⁵

Table 20. Directorate of Science and Technology Accounts and Activities, FY2009-FY2010

(budget authority in millions of dollars)

	FY2009 Enacted	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Directorate of Science and Technology - Total	933	968	968	995	1,006

¹⁹⁴ The BioWatch program is discussed above under the Office of Health Affairs (Title III).

¹⁹⁵ The SBInet program is discussed above under Customs and Border Protection (Title II).

	FY2009 Enacted	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Management and Administration	132	142	142	143	143
R&D, Acquisition, and Operations	800	826	825	852^a	863^b
Border and Maritime	33	40	40	40	44
Chemical and Biological	200	207	222	207	207
Command, Control, and Interoperability	75	80	81	83	82
Explosives	96	121	121	121	121
Human Factors / Behavioral Sciences	12	15	17	12	16
Infrastructure and Geophysical	76	45	52	68	75
Innovation	33	44	44	44	44
Laboratory Facilities	162	155	123	155	150
Test and Evaluation, Standards	29	29	29	29	29
Transition	29	45	46	45	46
University Programs	50	46	50	48	49
Homeland Security Institute	5	0	0	0	0

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, Senate-passed H.R. 2892 and S.Rept. 111-31, and P.L. 111-83 and H.Rept. 111-298.

Note: Totals may not add because of rounding.

a. Not adjusted for a rescission of \$7.5 million from unobligated prior-year appropriations.

b. Not adjusted for a rescission of \$6.9 million from unobligated prior-year appropriations.

Issues for Congress

Among the issues facing Congress are the S&T Directorate's priorities and how they are set; its relationships with other federal R&D organizations both inside and outside DHS; its budgeting and financial management; the allocation of its R&D resources to national laboratories, industry, and universities; and plans over the next few years to establish new university centers of excellence and terminate or merge several existing ones.¹⁹⁶

The start of NBAF construction in FY2011 will likely require significant increases in Laboratory Facilities funding over the next several years. It may also result in increased congressional oversight. For construction of NBAF and decommissioning of the Plum Island Animal Disease Center (PIADC), which NBAF will replace, DHS expects to need appropriations of \$687 million between FY2011 and FY2014. The estimated total cost of the NBAF project, excluding PIADC decommissioning and site-specific infrastructure and utility upgrades, increased from \$451 million in December 2006 to \$615 million in May 2009. Decommissioning PIADC is expected to

¹⁹⁶ For more information, see CRS Report RL34356, *The DHS Directorate of Science and Technology: Key Issues for Congress*, by Dana A. Shea and Daniel Morgan.

cost \$190 million. In the Department of Homeland Security Appropriations Act, 2009 (P.L. 110-329, Div. D, Sec. 540) Congress authorized DHS to offset NBAF construction and PIADC decommissioning costs by selling Plum Island. Site-specific costs of \$110 million will be contributed in-kind by Kansas State University and its partners.¹⁹⁷

Congress has been interested for several years in the role the S&T Directorate plays in testing and evaluation of large acquisition projects. The Homeland Security Act of 2002 authorizes the Secretary of Homeland Security, acting through the Under Secretary for Science and Technology, to “issue necessary regulations with respect to ... testing and evaluation activities of the Department” (P.L. 107-296, Sec. 306). Current DHS policy is that the Director of the Test and Evaluation and Standards Division (TSD) in the S&T Directorate is to establish the department’s testing and evaluation policies and processes, and the Director of Operational Test and Evaluation (OT&E) is to administer those policies and processes. The Director of OT&E is also to report independently to the department-level Acquisition Review Board on the status and progress of testing and evaluation for any acquisitions the board reviews. At present, the same person serves as the Director of the TSD and the Director of OT&E. This dual role may blur the distinction between the policy-setting function and the policy-administration function. Congress may also wish to consider whether the ability of the Director of OT&E to report independently on programs in other divisions and directorates is affected by the fact that TSD conducts programs of its own. The FY2010 appropriations bills and the associated committee and conference reports emphasized the involvement of the S&T Directorate in testing and evaluation of BioWatch Generation 3, SBInet, and other large acquisition programs. In particular, report language directed the S&T Directorate, not the Director of OT&E, to provide briefings and status reports to the appropriations committees.

Statutory authority for the Homeland Security Institute (HSI) expired in April 2009. Under its general authority to establish federally funded R&D centers, the S&T Directorate has replaced HSI with the Homeland Security Studies and Analysis Institute. It has also established a new Homeland Security Systems Engineering and Development Institute. Both institutes will be funded mostly on a cost-reimbursement basis by other S&T programs and other DHS and non-DHS agencies. The FY2010 DHS congressional budget justification estimated that reimbursable obligations by the two institutes would total \$122 million in FY2009 and \$143 million in FY2010.

Domestic Nuclear Detection Office¹⁹⁸

The Domestic Nuclear Detection Office (DNDO) is the primary DHS organization for combating the threat of nuclear attack. It is responsible for all DHS nuclear detection research, development, testing, evaluation, acquisition, and operational support. See **Table 21** for details of the appropriation for DNDO.

President’s FY2010 Request

The Administration requested a total of \$366 million for DNDO for FY2010. This was a 29% reduction from the FY2009 appropriation of \$514 million. The requested funding for Management and Administration and Research, Development, and Operations was approximately the same as in FY2009. No funds were requested for Systems Acquisition, which received \$153

¹⁹⁷ For more information on NBAF, see CRS Report RL34160, *The National Bio- and Agro-Defense Facility: Issues for Congress*, by Dana A. Shea, Jim Monke, and Frank Gottron.

¹⁹⁸ Prepared by Daniel Morgan, Specialist in Science and Technology Policy, Resources, Science, and Industry Division.

million in FY2009. According to the DHS congressional budget justification, new funds for Systems Acquisition are not needed in FY2010 because unobligated funds are available from previous fiscal years and because secretarial certification of Advanced Spectroscopic Portal (ASP) technology has been delayed.

House-Passed H.R. 2892

A floor amendment to the House bill added \$50 million to the Research, Development, and Operations account for activities currently funded by Systems Acquisition, including \$40 million for Securing the Cities. The House bill would otherwise fund DNDO at the requested levels.

Senate-Passed H.R. 2892

The Senate bill would provide \$10 million in Systems Acquisition for Securing the Cities and \$2 million less than the request for Management and Administration. It would rescind \$8 million appropriated in prior years but not yet obligated. Otherwise, it would provide the requested amounts for DNDO.

P.L. 111-83

The final bill provided a total of \$383 million for DNDO, an increase of \$17 million above the request. It provided \$20 million for Securing the Cities in the Systems Acquisition account. It rescinded \$8 million that was appropriated in prior years but has not been obligated.

Table 21. Domestic Nuclear Detection Office Accounts and Activities, FY2009-FY2010

(budget authority in millions of dollars)

	FY2009 Enacted	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Domestic Nuclear Detection Office Total	514	366	416	366	383
Management and Administration	38	40	40	38	39
Research, Development, and Operations	323	327	327	327^a	325^a
Systems Engineering and Architecture	25	25	25	25	25
Systems Development	108	100	100	100	100
Transformational Research and Development	103	111	111	111	109
Assessments	32	32	32	32	32
Operations Support	38	38	38	38	38
National Technical Nuclear Forensics	17	20	20	20	20
Systems Acquisition	153	0	50	10	20
Radiation Portal Monitoring Program	120	0	10	0	0
Securing the Cities	20	0	40	10	20

	FY2009 Enacted	FY2010 Request	FY2010 House-Passed	FY2010 Senate-Passed	FY2010 Enacted
Human Portable Radiation Detection Systems	13	0	0	0	0

Sources: CRS Analysis of the FY2010 DHS Congressional Budget Justifications, the FY2010 DHS Budget in Brief, House-passed H.R. 2892 and H.Rept. 111-157, Senate-passed H.R. 2892 and S.Rept. 111-31, and P.L. 111-83 and H.Rept. 111-298.

Note: Totals may not add because of rounding.

a. Not adjusted for a rescission of \$8 million from unobligated prior-year appropriations.

Issues for Congress

Congressional attention has focused on the testing and analysis DNDO conducted to support its decision to purchase and deploy ASPs, a type of next-generation radiation portal monitor. A requirement for secretarial certification before full-scale ASP procurement has been included in each appropriations act since FY2007 (including P.L. 111-83). The expected date for certification has been postponed several times. For more information, see CRS Report RL34750, *The Advanced Spectroscopic Portal Program: Background and Issues for Congress*, by Dana A. Shea, John D. Moteff, and Daniel Morgan.

The global nuclear detection architecture overseen by DNDO and the relative roles of DNDO and the S&T Directorate in research, development, testing, and evaluation also remain issues of congressional interest. For more information on the global nuclear detection architecture, see CRS Report RL34574, *The Global Nuclear Detection Architecture: Issues for Congress*, by Dana A. Shea.

The mission of DNDO, as established by Congress in the SAFE Port Act (P.L. 109-347), includes serving as the primary federal entity “to further develop, acquire, and support the deployment of an enhanced domestic system” for detection of nuclear and radiological devices and material (6 U.S.C. 592). Congress may wish to consider whether the acquisition portion of that mission is consistent with the elimination of most new funding for Systems Acquisition and the following statement in the President’s *Budget Appendix* (pp. 560-561):

In the past, DNDO acquired and deployed radiation detection technologies for DHS components, primarily the Coast Guard and the Customs and Border Patrol, or state and local users. Funding requests for radiation detection equipment will now be sought by the end users that will operate them.

FY2010-Related Legislation

Budget Resolution

The President’s FY2009 budget request included nearly \$992 billion in discretionary, non-emergency, budget authority. On March 6, 2008, the House and Senate Budget Committees each reported budget resolutions. The House budget resolution (H.Con.Res. 312) was passed in the House on March 13, 2008. While the budget resolution does not identify specific amounts for DHS, it does note that:

this resolution assumes funding above the President’s requested level for 2009, and additional amounts in subsequent years, in the four budget functions—Function 400 (Transportation), Function 450 (Community and Regional Development), Function 550

(Health), and Function 750 (Administration of Justice)—that fund most nondefense homeland security activities.¹⁹⁹

The Senate budget resolution (S.Con.Res. 70) was passed in the Senate on March 14, 2008. On June 5, 2008, the House and Senate reached agreement on S.Con.Res. 70. The final agreement contained language similar to the House language excerpted above, and also noted that:

the homeland security funding provided in this resolution will help to strengthen the security of our Nation's transportation system, particularly our ports where significant security shortfalls still exist and foreign ports, by expanding efforts to identify and scan all high-risk United States-bound cargo, equip, train and support first responders (including enhancing interoperable communications and emergency management), strengthen border patrol, and increase the preparedness of the public health system.²⁰⁰

¹⁹⁹ H.Con.Res. 312, §603

²⁰⁰ S.Con.Res. 70, §512.

Appendix A. DHS Funding in P.L. 111-5

Title VI of P.L. 111-5, the American Recovery and Reinvestment Act of 2009, included a number of provisions providing emergency funding to DHS components; these provisions were also included in the accompanying conference language in Title VI of H.Rept. 111-16. The following funding provisions are included for the Department of Homeland Security:

- \$200 million for the Office of the Under Secretary of Management. These funds are for the planning, design, and construction costs necessary to consolidate the DHS headquarters.
- \$5 million for the Office of Inspector General. Funds are to be used for oversight and auditing of programs, grants and projects funded under the DHS Title of the stimulus bill.
- \$160 million for the CBP Salaries and Expenses account. This includes \$100 million for the procurement and deployment of new or replacement non-intrusive inspection (NII) systems, and \$60 million for tactical communications.
- \$100 million for the CBP Border Security Fencing, Infrastructure, and Technology account for the expedited development and deployment of border security technology on the Southwest border. A DHS expenditure plan is required within 45 days of enactment of P.L. 111-5.
- \$420 million for the CBP Construction account. These funds are designated for the planning, design, management, alteration, and construction of land ports-of-entry. A DHS expenditure plan is required within 45 days of enactment of P.L. 111-5.
- \$20 million for ICE's Automation Modernization account for the procurement and deployment of tactical communications equipment and radios. A DHS expenditure plan is required within 45 days of enactment of P.L. 111-5.
- \$1,000 million for TSA's Aviation Security account to procure and install checked baggage explosives detection systems and checkpoint explosives detection equipment. A DHS expenditure plan is required within 45 days of enactment of P.L. 111-5.
- \$98 million for the Coast Guard Acquisition, Construction, and Improvements account for shore facilities and aids to navigation facilities, priority procurements due to material and labor cost increases, and for costs to repair, renovate assess, or improve vessels. The funding cannot be used for pre-acquisition survey, design, or construction of a new polar icebreaker. A DHS expenditure plan is required within 45 days of enactment of P.L. 111-5.
- \$142 million for the Coast Guard Alteration of Bridges account to be used for the alteration or removal of obstructive bridges. A DHS expenditure plan is required within 45 days of enactment of P.L. 111-5.
- \$300 million to FEMA's State and Local Program account, of which \$150 million is for Public Transportation Security Assistance and Railroad Security Assistance, including Amtrak security, and \$150 million is for Port Security Grants.
- \$210 million for FEMA's Firefighter Assistance Grants account to be used for the modification, upgrade or construction of non-Federal fire stations.
- \$100 million for FEMA's Emergency Food and Shelter account.

In addition to the broad funding distribution listed above, the general provisions of the Title VI of H.Rept. 111-16 includes so-called “buy American” requirements. With certain exceptions, this provision states that funds appropriated or otherwise made available to DHS in the Act may not be used for the procurement of fabric or fiber-related items if the item is not grown, reprocessed, reused, or produced in the United States. Generally, DHS can procure items with 10% or less of total value of non-compliant fibers. Exceptions to this requirement are made for vessels in foreign waters, emergency procurements, small purchases, and circumstances wherein the Secretary of DHS determines that qualifying items of satisfactory quality or quantity cannot be procured.

Appendix B. FY2009 Supplemental Appropriations

Supplemental Appropriations Act, 2009

Title VI of the Senate-reported version of the Supplemental Appropriations Act, 2009 (S. 1054), contains a total of \$287 million for DHS. Of this amount, \$140 million is fully recommended to support activities along the southwest border with Mexico in response to reports of increasing drug-related violence. The recommended budget authority includes the following amounts by account:

- CBP Salaries and Expenses: \$46 million, of which \$40 million is for various activities along the southwest border and \$6 million for the care and transport of unaccompanied illegal alien children;
- CBP Air and Marine Interdiction, Operations, Maintenance, and Procurement: \$5 million to support additional air operations along the southwest border;
- ICE Salaries and Expenses: \$67 million, of which \$50 million is for various activities along the southwest border, and \$12 million is for the care and transport of unaccompanied illegal alien children to HHS;
- U.S. Coast Guard Operating Expenses: \$140 million, of which \$129 million is for operational support to the Department of Defense requirements for Operation Iraqi Freedom and Operation Enduring Freedom, and \$10 million is for the High Endurance Cutter that plays a part in the Coast Guard's interdiction strategy;
- FEMA State and Local Programs: \$30 million for Operation Stonegarden.

The Senate Committee on Appropriations reported S. 1054 on May 14, 2009. The House passed H.R. 2346 on May 14, 2009. H.R. 2346 as passed by the House contained no supplemental budget authority for DHS. On June 24, 2009, H.R. 2346 became P.L. 111-32. The DHS funding provisions in the law were identical to those in S. 1054. In addition, P.L. 111-32, section 603(a) rescinded \$100 million from amounts previously appropriated for Hurricane Katrina to the FEMA Disaster Relief Account. Section 603(b) appropriated \$100 million, available until expended, to the FEMA State and Local Programs Account, designated for the State of Mississippi for an interoperable communications system.

Appendix C. DHS Appropriations in Context

Federal-Wide Homeland Security Funding

Since the terrorist attacks of September 11, 2001, there has been an increasing interest in the levels of funding available for homeland security efforts. The Office of Management and Budget, as originally directed by the FY1998 National Defense Authorization Act, has published an annual report to Congress on combating terrorism. Beginning with the June 24, 2002, edition of this report, homeland security was included as a part of the analysis. In subsequent years, this homeland security funding analysis has become more refined, as distinctions (and account lines) between homeland and non-homeland security activities have become more precise. This means that while **Table C-1** is presented in such a way as to allow year to year comparisons, they may in fact not be strictly comparable due to the increasing specificity of the analysis, as outlined above.

With regard to DHS funding, it is important to note that DHS funding does not comprise all federal spending on homeland security efforts. In fact, while the largest component of federal spending on homeland security is contained within DHS, the DHS homeland security request for FY2010 accounts for approximately 50% of total federal funding for homeland security. The Department of Defense comprises the next highest proportion at 28% of all federal spending on homeland security. The Department of Health and Human Services at 7%, the Department of Justice at 6% and the Department of Energy at 3% round out the top five agencies in spending on homeland security. These five agencies collectively account for nearly 94% of all federal spending on homeland security. It is also important to note that not all DHS funding is classified as pertaining to homeland security activities. The legacy agencies that became a part of DHS also conduct activities that are not homeland security related. Therefore, while the FY2010 request included total *homeland security* budget authority of \$34.7 billion for DHS, the requested *total gross budget authority* was \$55.1 billion. The same is true of the other agencies listed in the table.

Table C-1. Federal Homeland Security Funding by Agency, FY2003-FY2010
(budget authority in millions of dollars)

Department	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010 Request	FY2010 as % of Total
Department of Homeland Security (DHS)	17,381	23,063	22,923	24,549	26,571	29,554	32,486	36,860	34,732	50%
Department of Defense (DOD) ^a	16,126	8,442	7,024	17,188	17,510	16,538	18,032	19,779	19,303	28%
Department of Health and Human Services (HHS)	1,913	4,144	4,062	4,229	4,352	4,327	4,301	4,677	4,840	7%
Department of Justice (DOJ)	2,143	2,349	2,180	2,767	3,026	3,518	3,528	3,688	3,974	6%
Department of Energy (DOE)	1,220	1,408	1,364	1,562	1,702	1,719	1,827	1,939	2,008	3%
Department of State (DOS)	477	634	696	824	1,108	1,242	1,719	1,809	1,768	3%
Department of Agriculture (AG)	553	410	411	596	597	541	575	507	575	1%
National Science Foundation (NSF)	260	285	340	342	344	385	365	407	386	1%
Department of Veterans Affairs (VA)	49	154	271	249	298	260	309	305	369	1%
Department of Commerce	116	112	125	167	181	205	207	271	268	0%
Other Agencies	3,613	1,445	1,437	1,910	1,429	1,545	1,751	1,960	1,624	2%
Total Federal Budget Authority	43,848	42,447	40,834	54,383	57,118	59,833	65,099	72,201	69,845	100%

Sources: CRS analysis of data contained in Section 3. "Homeland Security Funding Analysis," and Appendix K of the Analytical Perspectives volume of the FY2010 President's Budget (for FY2008-FY2010); Section 3. "Homeland Security Funding Analysis," and Appendix K of the Analytical Perspectives volume of the FY2009 President's Budget (for FY2007); Section 3. "Homeland Security Funding Analysis," of Analytical Perspectives volume of the FY2008 President's Budget (for FY2006); Section 3. "Homeland Security Funding Analysis," of Analytical Perspectives volume of the FY2008 President's Budget (for FY2005); Section 3. "Homeland Security Funding Analysis," of Analytical Perspectives volume of the FY2006 President's Budget (for FY2004); Section 3. "Homeland Security Funding Analysis," of Analytical Perspectives volume of the FY2005 President's Budget (for FY2003) and Office of Management and Budget, *2003 Report to Congress on Combating Terrorism*, Sept. 2003, p. 10; CRS analysis of FY2002-2006 re-estimates of DOD homeland security funding provided by OMB, March 17, 2005.

Notes: Totals may not add due to rounding. FY totals shown in this table include enacted supplemental funding. Year to year comparisons using particularly FY2002 may not be directly comparable, because as time has gone on agencies have been able to distinguish homeland security and non-homeland security activities with greater specificity.

- a. FY2002, FY2003, and FY2004 do not include re-estimates of DOD homeland security funding. For FY2007 DOD changed the manner in which they calculate their homeland security activities. This new method of estimation has been applied for FY2005 and forward. Re-estimates of FY2002-FY2004 DOD funding using this new method of calculation were not available for inclusion.

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